

1990 CENSUS PROCEDURES AND DEMOGRAPHIC IMPACT ON THE STATE OF MICHIGAN

HEARING BEFORE THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE HOUSE OF REPRESENTATIVES ONE HUNDREDTH CONGRESS SECOND SESSION

JUNE 24, 1988

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1990 CENSUS PROCEDURES AND DEMOGRAPHIC IMPACT ON THE STATE OF MICHIGAN

FRIDAY, JUNE 24, 1988

HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, DC.

The committee met at 9 a.m., in Guild Hall of Eastern Michigan University, Ypsilanti, MI, Hon. William D. Ford, chairman, presiding.

OPENING STATEMENT OF CHAIRMAN FORD

Mr. FORD. In less than 21 months, the Bureau of the Census will conduct the bicentennial census of population and housing. The results will have a great impact on our Nation and society. They will be used to apportion seats in the House of Representatives, and to redraw the district boundaries. They will also be used to determine state legislative seats, local city and county council seats and a host of other positions. They will be the bases for distributing billions of dollars' worth of Federal and state aid.

For example, the Elementary and Secondary Education Act which Congress just reauthorized provides for Federal aid to school districts based on the number of children living in families whose income is below the poverty level. The data for this determination come right out of the decennial census.

Because this exercise is very important, public participation is a key factor in its success. Even though the form may seem complicated, it is really quite straightforward and will only take a few moments to complete. In any large scale operation such as the census there are of course going to be disputes.

Today we are here to review two of these disputes. Some have argued that *undocumented aliens* should not be included in the count the way they have been during the past several censuses. Others say that the census suffers from differential *undercounts* which are unfair to minorities and those living in large cities.

Mr. Dymally and a number of other Members of Congress have introduced H.R. 3511 which would require the Secretary of Commerce to adjust the population data to correct for any undercount or overcount.

Mr. Petri and a number of other Members of Congress have introduced H.R. 3639 which would require the Secretary of Commerce to make adjustment in the final census count to ensure that illegal aliens *not* be counted.

Our Subcommittee on Census and Population has conducted lengthy and thorough hearings on both issues, in various parts of the country.

We are here in Ypsilanti today to continue these hearings. We seek all the information available, and invited a distinguished and extremely knowledgeable list of witnesses representing the Census Bureau, and the best we could find on each side of the issue.

What we seek is the most complete, and the fairest census count possible; and I am confident that what we hear today will be of tremendous assistance to this end.

Our first witness is Dr. John Keane, Director of the Bureau of Census.

[NOTE.—At this point in the committee proceedings, Chairman Ford recognized and welcomed the various witnesses. The witnesses then presented their oral testimony which was followed up by extensive questioning and information-gathering colloquy between the committee and the individual participants. Regrettably, subsequent to the hearing, the stenographic reporter lost the transcription tapes of this field hearing. Therefore, the record will not contain the information that was obtained from the discussion session. The prepared statements of the witnesses are included in the hearing at this point in order to record as much as possible of what transpired.]

Communications from the Heritage Reporting Corporation; the Official Reporters to House Committees; Donnal K. Anderson, Clerk of the House; and Hon. William D. Ford, Committee Chairman, regarding the loss of the transcription tapes, also follow.

HERITAGE REPORTING CORPORATION

Official Reporters

1220 L Street, N.W., Suite 600

Washington, D.C. 20005

(202) 628-4888

July 13, 1988

The Hon. William D. Ford, Chairman
Committee on Post Office and Civil Service
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

As you are undoubtedly aware, the notes and tapes from the committee hearing held in Ypsilanti, Michigan, on June 24, 1988 are missing.

The reporter for this hearing checked an accordion folder containing the notes and tapes from this hearing at the desk of the Hyatt Hotel in Flint, Michigan, when she went to lunch. After lunch, due to the press of time, she took a cab to the airport to catch her flight back to Chicago and telephoned the hotel to ask that her file be sent to her in Chicago.

Upon receiving the package from the hotel, she found they sent her a similar folder that belonged to an attorney who attended a hearing she had reported on June 25th at the Hyatt Hotel in Flint. Since that time we have been attempting to locate the folder.

Much of the material in the folder identifies Heritage Reporting with our name and telephone number and the tapes are labeled with the legend, "If found call (202) 628-4888," our telephone number.

I want to assure you that every possible effort is being made to locate this material and that we will leave no stone unturned in our attempt to get these notes and tapes back.

We have been reporters for the House of Representatives for many years, and this is the first time anything like this has occurred. As a matter of fact, during the past year and a half we reported 600 hearings, yielding more than 70,000 pages for various committees and subcommittees of the House of Representatives, both in Washington, DC, and throughout the United States, without incident.

July 13, 1988, The Hon. William D. Ford

Page 2

The court reporter who lost this work has been dismissed. We have issued a memorandum to all our reporters, reemphasizing the manner in which the notes and tapes from hearings should be cared for.

I want to apologize for problems this has caused the committee and again assure you that every effort humanly possible is being made to locate the missing material.

Sincerely,



Teri A. Benson
President

TAB:ms

Copy to: Raymond Boyum, Director,
Office of Official Reporters

Donald R. Anderson
Clerk

Ray M. Wapum, Director
Official Reporters to House Committees

Office of the Clerk
U.S. House of Representatives
Washington, DC 20515-6601

July 21, 1988

Hon. William D. Ford, Chairman
Committee on Post Office and Civil Service
309 Cannon House Office Building
Washington, DC 20515

Dear Mr. Chairman:

It is with deep regret that I inform you that the tapes generated by the court reporter who covered your June 24, 1988 field hearing in Ypsilanti, Michigan have been lost, and it will not be possible to produce a transcript of the hearing.

Our office contracted with Heritage Reporting Corporation of Washington, D.C. to provide stenographic coverage of the hearing. Heritage has informed us that the reporter assigned to cover the hearing lost the tapes that constituted the record of your hearing. In an effort to recover tapes that may have been made by others of the hearing, Heritage Reporting contacted various television stations, radio stations, and newspapers in Ypsilanti. So far as Heritage has been able to ascertain, no other recordings were made.

I am very conscious of the time, effort, and expense that goes into conducting a field hearing and the importance of safeguarding all materials relating to the record, and I am very sorry this has happened.

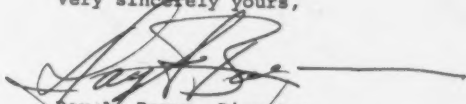
We are evaluating our policy of using Heritage Reporting to cover field hearings held by committees of the U.S. House of Representatives. I can assure you that they will not cover any hearings for your committee in the future.

Please accept my deepest and most sincere apologies for this occurrence. If there is anything I can do to assist you or your committee, now or at any time, please contact me.

- 2 -

Thank you for your patience and consideration of these
unfortunate circumstances.

Very sincerely yours,



Ray A. Boyum, Director
Official Reporters to House Committees

Enc.

Letter dated July 13, 1988
from Heritage Reporting Corporation

ONE HUNDRETH CONGRESS

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House of Representatives

Committee on Post Office and Civil Service

Washington, DC 20515

TELEPHONE (202) 225-4084

July 28, 1988

Mr. Ray A. Boyum
Director
Official Reporters to
House Committees
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Boyum:

I was distressed and dismayed by your letter of July 21 informing me that the transcription tapes of crucial field hearings were lost as the result of negligence. Untold hours of effort were involved in the planning and conduct of this very important hearing.

An excellent session resulted with the discussion of important issues of public policy involving the conduct of the 1990 census. I anticipated having a complete and detailed hearing record on which to make legislative decisions.

As a result of this inexcusable carelessness, I think that some thought should be given to permitting committees to hire stenographic assistance locally, particularly when a hearing is held in the vicinity of large metropolitan areas such as Detroit or Lansing where there are excellent reporting firms.

Words fail me as I attempt to describe how disappointed, angry and frustrated I am with this development. I hope we can be assured that this will never happen again.

Sincerely,


WILLIAM D. FORD
Chairman

WDF:prf

ONE HUNDREDTH CONGRESS

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House of Representatives

Committee on Post Office and Civil Service

Washington, DC 20515

TELEPHONE (202) 225-4054

August 11, 1988

Honorable Donald K. Anderson
Clerk of the House of Representatives
Washington, D. C. 20515

Dear Mr. Anderson:

On June 24, the Committee on Post Office and Civil Service held a hearing, which I chaired, in Ypsilanti, Michigan. My staff arranged for stenographic coverage of this hearing through the Official Reporters to House Committees.

On July 8, Pat Rissler of my Committee staff was advised by phone by the Official Reporters to House Committees that the tapes which would produce a transcript of the session were lost by the reporter employed by the firm to which this job had been subcontracted. Subsequently, I received a letter from the Director of the Official Reporters to House Committees, dated July 21 (copy enclosed) and a letter from the President of Heritage Reporting Corporation, dated July 13 (copy enclosed). I responded to the Official Reporters to House Committees on July 28 (copy enclosed).

I believe that the explanation provided by these two entities is inadequate and insufficient. I am requesting a more thorough and complete investigation of the disappearance of these tapes. I am not satisfied that this loss has been pursued in an aggressive manner and would like your assurance that your office will make every effort to ascertain the facts. Both the Official Reporters to House Committees and Heritage Reporting Corporation have failed to provide me with a chronology of the process by which this job was subcontracted, how this decision was made, what company was selected for the job and why, and, most importantly, a chronology of the recovery effort, including names of people contacted and detailed information about their statements. I would also like to know what continuing efforts are underway to recover these important tapes.

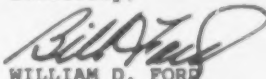
Honorable Donald K. Anderson
Page two
August 11, 1988

I feel very strongly that this is a matter that seriously affects the integrity of the House and its proceedings. I cannot overstate my deep feelings of frustration and concern with respect to this incident.

Your cooperation in this effort will be appreciated.

With kind regards,

Sincerely,


WILLIAM D. FORD
Chairman

Enclosures

WDF:prp

Donald K. Anderson
Clerk

Willis L. Denby, Jr.
Assistant to the Clerk

Office of the Clerk
U.S. House of Representatives
Washington, DC 20515-6001

September 26, 1988

Hon. William D. Ford
Chairman
Committee on Post Office and Civil Service
309 Cannon HOB
Washington, D.C. 20515

Dear Mr. Chairman:

I have received your letter informing me of the lost tapes of a field hearing in Ypsilanti, Michigan. I regret the frustration you have experienced over this unfortunate incident.

I have been in contact with Mr. Ray Boyum in the Office of Official Reporters to House Committees. He has informed me Heritage Corporation sent another person back to the hearing sight in Ypsilanti, Michigan in hopes of locating the folder containing the tapes of the hearing. This trip was to no avail.

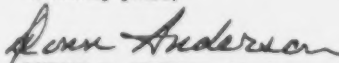
This is the first time the Office of Official Reporters to the House Committees has experienced any difficulties with Heritage Reporting Corporation. The House of Representatives has used Heritage because of the corporations willingness to meet the strict requirements established by the House of Representatives. The reason this hearing was assigned to a reporting company was due to the large number of field hearings held on June 24.

I realize this incident effects the probity of the Office of Official Reporters which in turn is a reflection on the House of Representatives. You can be assured that Heritage will not be used as reporters to any of your committee hearings. I have been informed by the Corporation that the reporter who covered your hearing was dismissed.

Again, I regret the frustration this has caused you, Mr. Chairman.

With warm personal regards, I am,

Sincerely yours,


DONALD K. ANDERSON, Clerk
U.S. House of Representatives

**UNITED STATES DEPARTMENT OF
COMMERCE**

WASHINGTON, D.C. 20230

BUREAU OF
THE
CENSUS

MICHIGAN POPULATION PROJECTIONS, APPORTIONMENT, AND
UNDOCUMENTED IMMIGRANTS

DR. JOHN G. KEANE
DIRECTOR, BUREAU OF THE CENSUS

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON POST OFFICE AND CIVIL SERVICE

JUNE 24, 1988
EASTERN MICHIGAN UNIVERSITY
YPSILANTI, MICHIGAN

INTRODUCTION

Mr. Chairman, in a little less than 2 years, on April 1, 1990, we will observe the bicentennial of census-taking in this country. But in many important respects the 1990 census has already begun.

We have completed our planning on most aspects of the census and are currently conducting dress rehearsal censuses in three locations. These are our final dry runs of operations before 1990. We have reported to you on the questionnaire content for 1990. Procurement for questionnaire printing will begin this September. We have already begun compiling the master address list for the census, having purchased addresses for urban areas. These addresses are being processed and given the correct geographic codes. We have begun listing addresses in the more rural areas where we cannot purchase address lists.

Today, I will address the specific issues raised in your letter of invitation.

PROJECTED POPULATION OF MICHIGAN IN 1990

First--the projected population of Michigan in 1990.

In early April 1988, we released population projections for states. These projections indicate that Michigan's population may be 9,293,000 by July 1, 1990. Michigan's population was 9,262,078 as of April 1, 1980. That

would represent a slight gain of less than 1 percent for the decade.

Based on our population projections, the population of the 50 states and the District of Columbia may reach 249.9 million by July 1, 1990, a gain of 9.4 percent for the decade.

FACTORS THAT CAUSE THE PROJECTED CHANGE IN MICHIGAN'S POPULATION

Second--factors that cause the projected change in Michigan's population.

Population projections are based on various assumptions that we make about the components of population change--births, deaths, and migration (internal and international). The estimates through the first part of the decade and the projections for the rest of the decade show that natural increase (births minus deaths) exceeds the estimate of net outmigration. As a result, Michigan is projected to show a slight gain in population for the decade. Migration levels are generally assumed to be a continuation of recent trends. There is no attempt to predict economic factors or their effects. The methodology we use to prepare projections will be discussed in detail in the state population projections report due out this June.

APPORTIONMENT PROCESS

Third--the apportionment process.

Apportionment is the allocation of seats in the House of Representatives to each state based on the state's population as determined by the decennial census. The census and apportionment are mandated by Article 1, Section 2 of the Constitution.

The role of the Census Bureau in the apportionment process is to conduct the census itself. On behalf of the President, we calculate the apportionment based upon the results of the census. We must report the apportionment counts to the President within 9 months of Census Day. For the 1990 census, that will be by December 31, 1990. Within a week of the opening of the next session of Congress (after December 31, 1990), the President is required to transmit to the Clerk of the House of Representatives the census count for each state and the number of Representatives to which each state is entitled. Within another 15 calendar days, the Clerk of the House then notifies the governor of each state how many Representatives that state will be entitled to in the next Congress.

In addition to the census counts, two other things are needed to calculate apportionment: (1) the total number of seats in the House of Representatives, and (2) a mathematical formula for apportioning the seats. Both of these are determined by Congress. The current House size, 435 members, has been unchanged since the apportionment following the 1910 census, except for a temporary increase at the time of the admission of Alaska and Hawaii. The mathematical formula used to calculate apportionment--"equal proportions"--is specified in Title 2, section 2 of the U.S. Code and has been used in each census beginning with 1940.

ESTIMATED NUMBER OF UNDOCUMENTED IMMIGRANTS
IN THE 1980 CENSUS COUNTS

Fourth--the estimated number of undocumented immigrants in the 1980 census counts.

We estimated that we counted 2,057,000 undocumented immigrants in the 1980 census. I want to emphasize that this is only an estimate prepared as part of our program to evaluate coverage in the 1980 census. This estimate was based on the census sample data.

PROCEDURE USED TO ESTIMATE THE NUMBER OF
UNDOCUMENTED IMMIGRANTS IN THE 1980 CENSUS

Fifth--the procedure used to estimate the number of undocumented immigrants in the 1980 census.

We did this by estimating the number of legal aliens in the country using data from the Alien Registration System of the Immigration and Naturalization Service (INS). Then we compared that number with an estimate of the total number of aliens (undifferentiated as to legal and undocumented) derived from the census sample questions on citizenship and country of birth. We interpreted the difference between the total number of aliens counted in the census and the estimated number of legal aliens in the country at census time as an estimate of undocumented immigrants included in the 1980 census. Both the INS and census data required a number of modifications and adjustments designed to correct for known deficiencies in the data. Not all possible deficiencies could be corrected. Thus, the estimates still are limited by potential errors.

THE NUMBER OF UNDOCUMENTED IMMIGRANTS THE CENSUS BUREAU
EXPECTS TO COUNT IN 1990

Sixth--the number of undocumented immigrants we expect to count in 1990.

We have not made any predictions, estimates, calculations, tabulations or projections of the total number of undocumented immigrants who will be counted in the 1990 census.

ALLOWANCE FOR NET GROWTH IN UNDOCUMENTED IMMIGRANT POPULATION IN
CURRENT POPULATION ESTIMATES

Seventh--allowance for net growth in undocumented immigrant population in current population estimates.

Prior to January 1986, our postcensal population estimates included no allowance for one of the components of population change--net growth in the number of undocumented immigrants in the country. To improve our estimates, we began in January 1986 to allow for estimated net annual undocumented immigration of 200,000 for every year since 1980.

We derived this estimate, in part, by using a supplement to the April 1983 Current Population Survey (CPS) that provided data on country of birth, year of immigration, and citizenship for persons 14 and older. Research using a supplement to the June 1986 CPS supported this estimate of average annual change in the undocumented immigrant population for the period 1980 to 1986.

PROBLEMS IN CONDUCTING THE 1990 CENSUS IF REQUIRED TO EXCLUDE
UNDOCUMENTED IMMIGRANTS

Eighth--problems in conducting the 1990 census if required to exclude undocumented immigrants.

We do not know what procedures we would use if we were required to exclude undocumented immigrants. The proposed methods for excluding undocumented immigrants that we have examined so far--including direct enumeration and estimation--would cause problems in carrying out the census and would be likely to introduce significant errors into the census. The problems would differ depending on what we would be directed specifically to do.

General Problems

In general, any change in our plans for the 1990 census could impose serious timing problems that could affect the conduct of the census. As I have testified several times before the Subcommittee on Census and Population, we are on a tight time schedule with regard to getting the questionnaires printed. We will submit the final questionnaires to the OMB next month. Without questionnaires, we cannot conduct the census. Another general concern is that changes in our plans now would mean that we might have to conduct the 1990 census with untested and unproven procedures. This could increase risk in the census.

Specific Problems

Now, I will discuss some specific problems with proposed methods for excluding undocumented immigrants.

One seemingly plausible approach would be to determine the legal status of every person. This causes both perceptual and operational problems that could jeopardize our ability to take the census. Asking about legal status could result in the misperception that the information we collect is used

for enforcement. This could seriously threaten cooperation even among legal residents. The answers obtained from such an inquiry would be questionable at best. Indeed, many respondents simply would not be willing or able to answer honestly or accurately. We would be asking respondents to make a legal determination, a process that normally follows a judicial procedure. We face similar problems if we direct undocumented immigrants simply to exclude themselves. Legal residents may find this a convenient way to excuse themselves from participating. Because the Census Bureau could not distinguish the legal and undocumented resident nonparticipants, there could be a large undercount among legal residents.

Another hypothetical procedure might be to estimate the number of undocumented immigrants from a separate information source and subtract them from the census totals. Concerns with possible alternatives for making these estimates include the lack of an appropriate information source; timing (the estimates could not be developed until the census is complete, thus delaying delivery of apportionment and redistricting counts); and the possibility that the resulting estimates would contain errors serious enough to affect the allocation of Congressional seats.

Additional Concerns

Now, I will discuss some additional concerns we have about excluding undocumented immigrants.

One of the ways we decide what to ask in the census is whether the subject is suitable for self-enumeration. This is important because we expect about 78 percent of the households in the country to answer their questionnaires

and return the forms by mail. The determination of legal status among types of aliens is not straightforward. In many cases, it requires administrative review by the Department of Justice. Many aliens do not know precisely what their legal status is. Neither the Census Bureau nor our enumerators in the field have the legal qualifications to assist respondents in answering such a question.

I will illustrate further some of the complexities:

Can only aliens who have been lawfully admitted as permanent residents be included in apportionment counts? This category of aliens may not be easily identifiable in either of the proposed methods. Other aliens, such as refugees and students, may be confused about their legal status and misreport themselves. Although INS records can give us numbers of persons admitted to the country as permanent residents, they do not show how many of those persons have subsequently left the country nor do they include current addresses for those who have stayed. This information is crucial to using INS records to estimate the number of aliens to be excluded.

What about aliens who apply for amnesty under the Immigration Reform and Control Act of 1986? If they have not completed the application process for permanent residence status by April 1, 1990, they would be excluded from the apportionment counts.

There are also groups here under an indefinite status, neither legal nor illegal. These include persons in the "extended voluntary departure" or "temporary safe haven" categories.

Mr. Chairman, that concludes my answers to the questions in your letter of invitation.

STATEMENT OF DAVID HUCKABEE AND THOMAS DURBIN

Thank you, Mr. Chairman and Members of the Committee.

My colleague, Mr. Durbin, and I are here at the Committee's request to discuss and respond to questions about the implications of excluding illegal aliens from the census counts used for reapportioning the House and to explain how apportionment works. As the Committee is aware, CRS takes no position on public policy issues. Accordingly, what we say here, and in our reports submitted for the record, reflect only the results of our research on technical, legal and practical aspects of this proposal.

Mr. Durbin is submitting for the record a CRS report that concludes that the weight of constitutional interpretation and analysis raises doubt concerning the exclusion of illegal aliens in the census counts used for apportionment. Mr. Durbin will be pleased to entertain questions about this. I am submitting for the record a report by me and my co-author, Dr. Jennifer Williams, that examines this issue from a practical perspective focusing on: What are some of the problems of enumerating the illegal alien population; and what effect might excluding illegal aliens have on the apportionment?

At the outset, let me briefly describe how the House is reapportioned by the Census Bureau. The intuitive and simple way to apportion seats in the House is to divide the U.S. population by 435 to get an "ideal district size." You then divide each State's population by the "ideal district size," and allocate to each State the number of seats indicated, rounding up or down as appropriate. There are two major problems with this approach when you consider that the House size is fixed at 435. First, it is possible that some States's populations might possibly be so small that they would be "entitled" to less than half a seat, yet the Constitution requires that each State must have at



Congressional Research Service
The Library of Congress

Washington, D.C. 20540

APPORTIONMENT OF THE HOUSE AFTER THE 1990 CENSUS: CONSTITUTIONAL AND PRACTICAL
IMPLICATIONS OF EXCLUDING ILLEGAL ALIENS.

Testimony before the House Committee on Post Office and Civil Service
by
David C. Huckabee and Thomas M. Durbin
Congressional Research Service

June 24, 1983

least one seat. Thus, a method which relies entirely on rounding will not always comply with the Constitution. Second, even a method that assigns each State its minimum of one seat and otherwise relies on rounding, might mean the House size would have to "float" up or down around 435 seats, because, after rounding each State's fractional remainder, there might be too few or too many seats assigned.

The formula which the Census Bureau uses to reapportion the House relies on rounding, but it is a modified form of rounding because the number used to divide into each State's population (which in 1990 will be around 573,000) has to "slide" upward or downward so that, when the rounding occurs and you sum all the seats assigned to each State, the total number of seats equals 435. The actual way that the Census Bureau reapportions the House is to construct a "priority list" that ranks each State's claim to a seat in the House. This list is a convenient way to reapportion because it allows you to see which State gets the last seat in the House (number 435), and which States just missed seats.

By using a "priority list," for example, we can see that if the Census Bureau's latest population projections for 1990 are correct, Michigan's 17th House seat would rank 444 in priority--nine seats below the 435 seat cutoff. If these projections are correct for all the States, Michigan would need 236,629 more people to jump over the States ahead of it on the list to obtain seat 435 and retain its 17th seat.

But how good are population projections for predicting apportionment after the Census? Experience shows that they are somewhat off the mark. If we had relied on the Census Bureau's best population projection for 1980 as an

CRS-3

indication of the apportionment outcome after the census, we would have had some surprises. The Bureau's best 1979 projections for 1980 would have resulted in five seats being mis-assigned among ten States. How can this happen? Many factors are involved, but perhaps the most important one is that very small population differences can, and have, made a difference in apportionment. In 1970, fewer than 300 people switched the 435th seat from Connecticut to Oklahoma. Indeed, one person can make the difference.

So what happens when we try to factor in illegal alien exclusion from the projected census count? We add another set of estimates and assumptions to adjust population projections that may be wrong. While we can produce tables and priority lists that give an appearance of precision, they may be considerably at variance from reality. If we assume, for example, that 2,000,000 illegal aliens will be counted in the 1990 Census (a total similar to the estimate made by Passel and Woodrow, two Census Bureau employees who presented a paper on illegal aliens in 1984), and we further assume that the illegal aliens will be distributed among the States in proportion to the 1984 estimates, and we then subtract these numbers from each State's Census projection of 1990 population, California loses a seat and Pennsylvania gains one. But, we have another population projection--not by the Census Bureau--that shows California and Texas may lose seats to West Virginia and Kansas if 2,000,000 illegals are excluded. Can we believe either, or any, projection? Probably not, because the apportionment formula is too sensitive to small changes to be used reliably with population projections to predict outcomes.

We do know, however, that if Passel and Woodrow's estimates had been used to adjust the 1980 Census apportionment counts, one seat each would have

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shifted away from California and New York to North Carolina and Georgia. Would their estimates have been good enough to be relied upon to adjust the apportionment population? We do not know. However, we have seen some evidence from the illegal immigrant amnesty program that the distribution of legalization applications among the States on a proportional basis is similar to the distribution in Passel and Woodrow's estimates; but we do not know whether the estimate of actual numbers of illegal aliens are even roughly accurate.

If the Bureau were required to exclude the illegal aliens from the Census, it is not clear now whether this would affect its ability to meet the December 31, 1990 deadline for delivering the reapportionment results. In part this uncertainty derives from the fact that alien registration data, which was kept by the Immigration and Naturalization Service and used by Passel and Woodrow, for their estimates is no longer collected. Given this lack of data, can sound estimates be produced in time to meet the deadline, if at all?

A delay in the delivery of the reapportionment results could result in redistricting delays in the States. Consider, for example, that after the 1980 census, Montana received its redistricting numbers too late to redistrict for the 98th Congress. Would more States be similarly inconvenienced by a delay in the 1990 reapportionment? Also, will the Bureau be able reliably to exclude illegal aliens from sub-State populations? If the Bureau cannot but an illegal alien adjustment takes place for apportionment purposes, adjusted numbers would be used for reapportioning congressional seats among States while unadjusted totals would be used for redistricting within States.

Mr. Chairman, while arguments can be made for the exclusion of illegal aliens from the census for purposes of apportionment, we have not addressed them. This discussion has focussed entirely on practical problems that need to be understood in assessing the proposal. This concludes our testimony. We are ready to respond to any questions the Committee may have.

DH:rda

TESTIMONY OF ROBERT A. SEDLER, PROFESSOR OF LAW, WAYNE STATE UNIVERSITY, DETROIT, MICHIGAN, BEFORE THE HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE, YPSILANTI, MICHIGAN

Members of the Committee:

My name is Robert A. Sedler. I am Professor of Law at Wayne State University in Detroit, where I teach the courses in Constitutional Law. In 1980, I was counsel for the City of Detroit and Mayor Coleman A. Young in a federal court suit, seeking to compel the Census Bureau to make a statistical adjustment to the 1980 census enumeration for the racially differential undercount.

I have been asked to address the Committee with respect to the constitutional implications of two proposals for an adjustment of the 1990 census enumeration. One proposal is that the census enumeration should be adjusted to exclude undocumented or "illegal" aliens. The second proposal involves the question we raised in the 1980 census case: should the census enumeration be adjusted by statistical means to take account of the racially differential undercount, that is, the disproportionate undercounting of racial and ethnic minorities, such as blacks and hispanics, in comparison to whites? I will address these questions in order.

Assuming that there are valid methods to exclude undocumented aliens from the census enumeration, would such exclusion be consistent with the Constitution? In my opinion, such exclusion would be unconstitutional. The enumeration provisions of the Constitution, Art. I, sec. 2, cl. 3, as amended

by sec. 2 of the Fourteenth Amendment, mandate that the census enumeration include all persons who are actually resident in the United States as of the enumeration date, regardless of their legal entitlement to such residence.

Art. I, sec. 2, cl. 3, as amended by sec. 2 of the Fourteenth Amendment, provides simply that, "Representatives shall be apportioned among the several States according to the whole number of persons in each State..." The constitutional purpose of the decennial census - whatever other purposes census data may serve - is to determine the number of persons actually resident in each state, so that representation in the United States House of Representatives can be apportioned in accordance with the constitutional principle of equal representation for equal numbers of persons. Wesberry v. Sanders, 376 U.S. 1, 18 (1964). I want to emphasize that the Constitution refers to "persons," not to "citizens," or "voters." In constitutional theory - reflecting the Great Compromise of the Constitutional Convention - the Members of the House of Representatives represent "persons according to their respective numbers." So long as people live within a state of the United States, they are entitled to representation in the House of Representatives, and it does not matter whether or not they are citizens who are entitled to vote for those Representatives. Members of the House of Representatives not only represent voters, they also represent children, aliens, people not eligible to vote, and everyone residing in the Congressional District from which they

have been elected. Thus, whenever any person - whatever that person's legal status- is excluded from the census enumeration, there is a violation of the constitutional principle of equal representation for equal numbers of persons in the United States House of Representatives.

It is clear that undocumented aliens are "persons" within the meaning of the Fourteenth Amendment. The Supreme Court specifically answered this question in Plyer v. Doe, 457 U.S. 202 (1982), where the Court held that Texas violated the equal protection clause of the Fourteenth Amendment by denying schooling to undocumented alien children. As the Court stated: "Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments." Since aliens are "persons" for purposes of the due process and equal protection provisions of sec. 1 of the Fourteenth Amendment, they are likewise "persons" for purposes of the apportionment of representation provision of sec. 2 of the Fourteenth Amendment. Moreover, as the Supreme Court emphasized in Plyer v. Doe, despite the legal restrictions on entry into the United States, a substantial number of persons have succeeded in unlawfully entering the United States and now live in the various states, and these persons can remain here unless deported. The Court also stated: "That a person's initial entry into a State, or into the United States, was unlawful, and

that he may for that reason be expelled, cannot negate the simple fact of his presence with the State's territorial perimeter. Given such presence, he is subject to the full range of obligations imposed by the State's civil and criminal laws. And until he leaves the jurisdiction - either voluntarily or involuntarily in accordance with the Constitution and laws of the United States - he is entitled to the equal protection of the laws that a State may choose to establish."

For the same reasons, the undocumented or "illegal" alien is entitled to representation, along with all other persons, in the United States House of Representatives. The term, "according to their respective numbers, counting the whole number of persons in each State," means what it says. It refers to all "persons" in the ordinary sense of the term, regardless of their legal entitlement to live in the United States. Thus, the census enumeration must include the "whole number of persons in each State," and the enumeration cannot, consistent with the Constitution, exclude any persons because of their status as "illegal aliens."

Turning now to the second proposal, I would contend, as we argued in the 1980 census case, that the Constitution requires that a statistical adjustment be made in the census enumeration to take account of the racially differential undercount. The Census Bureau has long been able by means of demographic analysis to estimate the national undercount in the actual census enumeration. Demographic analysis starts with a base population

figure from the last decennial census, adds estimated births and immigration, and subtracts estimated emigration and deaths. The resulting figure is an estimation of what the overall national population should be. The difference between that figure and the figure that results from the actual census enumeration is the estimated undercount. In 1980, the Census Bureau estimated that the overall national undercount ranged from 1% to 2.2%. It estimated that the black undercount ranged from 5.6% to 6.5%. While demographic analysis cannot be used to estimate the hispanic undercount, since birth and death records do not include ethnic origin, there are other ways of estimating the hispanic undercount, and it has found to be only slightly less than the black undercount. The racially differential undercount then refers to the differential of completeness between blacks and hispanics on the one hand and whites on the other in the actual census enumeration. In the 1980 census blacks were undercounted at a rate approximately three times that of whites. In the 1970 and 1960 census blacks were undercounted at a rate approximately four times that of whites.

The racially differential undercount has nothing to do with the way that the actual enumeration - the headcount - is conducted. The Census Bureau has improved considerably its carrying out of the actual enumeration process, but notwithstanding these improvements, substantial persons will still be missed, and blacks and hispanics will be disproportionately missed in comparison to whites. The reasons

for the differential racial undercount relate to racial poverty and urban concentration. Stated simply, the actual enumeration process, no matter how well conducted, will miss large numbers of low-income persons living in the central cities, and these persons are predominantly black and hispanic. As a result, the census undercount is felt most directly in the central cities, and the reported population of the central cities will be less than their actual population. In the 1980 census, for example, it was estimated that the City of Detroit was underreported by approximately 35,000 persons. The underreporting is even greater for cities like New York that have both a substantial black and a substantial hispanic population.

Not only will the central cities lose out in regard to funding programs based on population, but more importantly from a constitutional standpoint, in the apportionment of Congressional representation following the census, the representation and vote of persons living in the central cities will be diluted in comparison with the representation and vote of persons living in the predominantly white suburban areas of the state. For example, because of the underreporting of Detroit's population in the 1980 census, people living in the First Congressional District, which is located entirely in Detroit, have less representation in the United States House of Representatives than people living in the all-white and rather affluent Eighteenth Congressional District of Michigan. Each Congressional District in Michigan has approximately 500,000

persons, but the First Congressional District actually has many more persons than the Eighteenth Congressional District, reflecting the impact of the racially differential undercount on Congressional representation within the state of Michigan.

Let me now set forth the constitutional argument, which we advanced in the 1980 case, and which was accepted by Judge Horace Gilmore of the United States District Court for the Eastern District of Michigan. The constitutional argument is based on the premise that the Constitution requires that the official census count reflect as accurately as is reasonably possible the true population of the states, cities and other governmental sub-units within each state. This is so that the resulting apportionment of Congressional representation will fully implement the constitutional principle of equal representation for equal number of persons in the United States House of Representatives. Because of the racially differential undercount, an official population count, using only the raw, unadjusted census data, does not accurately reflect the actual population of the states and the governmental units of each states, and results in the underrepresentation of persons living in areas that have a substantial black and hispanic population. Thus, the apportionment of Congressional representation that results from the use of an unadjusted official population count violates the constitutional principle of equal representation for equal numbers of persons in the United States House of Representatives.

Judge Gilmore found, on the basis of expert testimony presented by both sides at trial, that a statistical adjustment for the racial undercount, based on the then available techniques would produce census figures that on balance would be more accurate than those derived from the raw unadjusted census data alone. Therefore, he held that the Constitution required that such an adjustment be made. The decision was reversed on appeal on essentially procedural grounds, and the 1980 census figures were not adjusted for the racially differential undercount.

The adjustment techniques that were available in 1980 have been refined even further and are now available for use in adjusting the 1990 census. Their use will be most effective and will achieve the greatest accuracy if the adjustment techniques are built into the planning that takes place for the 1990 census, and the adjustment takes place concurrently with the actual enumeration process. While the adjustment techniques are not perfect, their use will produce a census count that on balance will be considerably more accurate than the count that would be derived from the raw unadjusted census data alone.

Regardless of whether an adjustment for the racially differential undercount is constitutionally mandated, as I have contended, it is certainly constitutionally permissible, and such an adjustment will implement fully the constitutional principle of equal representation for equal numbers of persons in the United States House of Representatives. Unfortunately, the Census Bureau has again refused to make such an adjustment. But

the Constitution reposes in the Congress the responsibility to provide for the taking of the decennial census, and it is within the power of Congress to require an adjustment for the racially differential undercount. I understand that a bill to this effect has been introduced in the House by Representative Dymally of this Committee and in the Senate by Senator Moynihan. I would strongly urge this Committee to report this bill favorably, and to insure that in the 1990 decennial census, racial minorities will no longer be disproportionately undercounted, and that there will be full realization of the constitutional principle of equal representation for equal numbers of persons in the United States House of Representatives.

Thank you.

TESTIMONY OF PROFESSOR T. ALEXANDER ALEINIKOFF

UNIVERSITY OF MICHIGAN LAW SCHOOL

BEFORE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

at Eastern Michigan University

Ypsilanti, Michigan

June 24, 1988

I am delighted to be here today to testify before your Committee. I teach courses in constitutional law and immigration law just down the road (at the University of Michigan Law School), and the topic of these hearings--whether undocumented aliens ought to be counted in the 1990 census--lies at the intersection of my academic interests.

You have asked me to address the question of whether the Constitution requires that undocumented aliens be counted in the 1990 census. My conclusion is that the Constitution probably requires that undocumented aliens who have established a residence in the United States be counted for purposes of apportioning representatives among the states. After explaining the basis for this conclusion, I will make a few comments about why I believe it would be unfortunate for Congress--even assuming it had the constitutional authority--to exclude undocumented aliens from the census.

I should make clear at the outset that I do not think that counting undocumented aliens will necessarily redound to their

benefit. There seems to be an unexamined assumption by both supporters and opponents of the FAIR lawsuit that counting undocumented aliens is a "pro-alien" position and not counting them is an "anti-alien" position. As a little reflection will reveal, counting undocumented aliens does not mean that they or their interests will thereby be represented in Congress. It simply means that states with high numbers of undocumented aliens may gain additional representatives in Congress. Depending on the political make-up of the state, such an outcome may actually harm alien interests--if the voting population of the state is strongly "anti-alien". Indeed, counting a group that is disenfranchised may be the worst situation for that group. Recall that the idea that slaves should count for apportionment purposes was pressed by the slave states, not the free states.

I. Does the Constitution mandate that undocumented aliens be counted in the 1990 census?

Article I, section 2, paragraph 3 of the original Constitution provided:

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.

This provision was superseded by section 2 of the Fourteenth Amendment, which provides:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number or persons in each State, excluding Indians not taxed.

One can state with the utmost confidence that these provisions call for the counting of (at least some) aliens residing in the states. Other interpretations of the phrase "whole number of persons" are inconsistent with other parts of the constitutional text. For example, one can imagine plausible theoretical grounds for apportioning representation based on the number of voters or citizens in each state. But Article I and the Fourteenth Amendment use the word "citizen" elsewhere (and Article I also uses the term "elector"), which strongly suggests that the Constitution's reference to "whole number of persons" means a category broader than voters or citizens. See, e.g., Yick Wo v. Hopkins, 168 U.S. 356 (1886) (resident Chinese aliens are "persons" under the Fourteenth Amendment's equal protection clause). Furthermore, as pointed out by the Court in FAIR v. Klutznick, 486 F. Supp. 564, 576 (D.C. Cir. 1980) (three-judge court), during consideration of the Fourteenth Amendment "other options [for determining the apportionment base] were considered and expressly rejected, after considerable debate, including the options of 'voters' or 'citizens.'" It is clear that the Reconstruction Congress recognized that the formulation in Article I encompassed aliens (see, e.g., Cong. Globe, 39th Cong. 1st Sess. 356 (statement of Senator Conkling)), and that it intended to keep the original apportionment base (except for the

elimination of the infamous "three-fifths" ratio). Throughout all the historical materials that I have investigated, the central idea is that population should constitute the basis of apportionment, and no where do the materials suggest that resident aliens ought not to count as part of the population of the states.

Further support for counting aliens derives from the consistent and long-standing practice of both the Congress and the Executive Branch. Since the first census of 1790,¹ census statutes have required the counting of "inhabitants"--not "citizens" or "voters"--and the Executive Branch has always interpreted such statutes as mandating the counting of resident aliens.

The conclusion that the enumeration clause requires the counting of aliens may seem counter-intuitive. If we count aliens, some might ask, are we not saying that they have a "right to be represented" and would not such a result be inconsistent with the idea that only members of a political community have a right to be represented in the national legislature? The answer to this question requires investigation of why the Framers favored apportionment-by-population.

Apportionment based on population was a new idea in the late

¹ Act of March 1, 1790, 1 Stat 101. Interestingly, the statute provided that census takers distinguish "free persons from all others; ... the sexes and colors of free persons, and the free males of sixteen years and upwards from those under that age." But it did not require distinguishing citizens from aliens.

18th century. It was an important part of republican ideology because such a formula of representation would prevent the creation of a "rotten borough" system that allowed a small aristocracy to dominate Parliament in England.² Proportioning representation based on the actual number of persons would bring the political system closer to majority rule.

The apportionment scheme was also based on the view that representation should be linked to taxation. Clearly, if states were to be asked to contribute to the new national government, such contribution would have to bear some relation to size (no one expected Rhode Island to contribute as much as Massachusetts). But if large states would be taxed more, it was sensible that they have representation commensurate with their contribution. (Of course this idea echoes the Revolutionary slogan that "taxation without representation is tyranny.") The linkage of representation and taxation is explicit in the enumeration clause, which provides that "Representatives and direct taxes shall be apportioned among the several States." The clause also excludes from the apportionment base "Indians not taxed."³ Both the "taxation without representation" and the

² Gordon S. Wood, *The Creation of the American Republic, 1776-1787*, at 162-73 (1969).

³ I have stated the relationship between representation and taxation in theoretical terms here. Perhaps more importantly, the linkage helped resolve the troubling controversy over how to count slaves. Southern states would be able to count slaves for representation purposes but would also have to count them when direct taxes were apportioned. As Madison noted in *Federalist* No. 54, this system would "produce the requisite impartiality" on the part of the states in the conducting of the census.

"majority rule" justifications were reflected in the Pennsylvania Constitution of 1776--the first constitution to expressly provide for representation based on population and a document no doubt known to the Framers. It proclaimed that "representation in proportion to the number of taxable inhabitants is the only principle which can at all times secure liberty, and make the voice of a majority of the people the law of the land."⁴

Apportionment by population was also linked with the view that representation ought to be based on "wealth." An early draft of the enumeration clause provided that the initial apportionment would be altered based on "wealth and inhabitants." While this formulation did not survive, it was subsequently remarked at the Constitutional Convention that population would serve as a reasonable approximation of wealth. The desire to count wealth was, perhaps in large part, politically motivated. Northern coastal states saw it as a way to prevent a shift of power to the rapidly growing (but poorer) western states; and southern states used the concept as a argument for counting slaves. That slaves were ultimately counted as 3/5 is hard to reconcile on any other ground than that the Framers thought that wealth formed an appropriate basis for representation. Madison makes this explicit in his defense of the Convention's

⁴ The South Carolina Constitution of 1778 provided for reapportionment "in the most equal and just manner according to the particular and comparative strength and taxable property of the different parts of the [parishes and districts], regard being always had to the number of white inhabitants and such taxable property."

apportionment scheme in Federalist No. 54. In that essay, Madison constructed an argument that "one of our Southern brethren" might make for counting slaves. The "Southerner's" analysis, which Madison generally accepts, relied in part on the claim that "votes allowed in the federal legislature to the people of each State ought to bear some proportion to the comparative wealth of the States." To be sure, the enumeration clause does not apportion based on wealth. But as Madison explained in Federalist No. 54, "[i]t is agreed on all sides that numbers are the best scale of wealth and taxation, as they are the ~~only proper~~ scale of representation."

Thus, apportionment by population served several goals. It supported majority rule, linked taxation and representation, and based representation on the respective wealth of the states. It is difficult to know the relative importance of these purposes in the minds of the Framers or the degree to which the theoretical arguments were used to mask political interests. I am not an historian and am not prepared to answer these questions. But I think it can be said with a fair degree of certainty that, contrary to modern intuitions, the apportionment scheme was not seen as linked with "the right to vote."⁵ It is thus not surprising that the enumeration clause speaks of "persons" and

⁵ It could be argued that the Framers thought that non-voters would be evenly distributed among the states; thus, a system of apportionment by population would, in effect, be based on the number of eligible voters. But this theory cannot explain the counting of slaves, which greatly benefitted the slave states and bore no relationship to the number of eligible voters in the South.

not "voters" or "citizens."⁶

I do not believe that the intent of the Framers necessarily controls constitutional interpretation today. And modern developments may make the original understanding of the enumeration clause looked antiquated. Thus, one might make the following argument: We now have near universal suffrage in this country and the Supreme Court has established the principle of "one person, one vote" for establishing congressional districts within states. This means that, in our current political system, there is a close link between voting and representation (that is, equal numbers of voters should choose equal numbers of representatives), and since only citizens can vote, aliens ought not to be counted for apportionment purposes.⁷ While I see a logic to this argument, it is simply inconsistent with the text of the Constitution and a consistent practice of counting aliens

⁶ See R. Luce, *Legislative Principles* 356-57 (1930):

Nowhere in the discussion [at the Convention], as far as it is recorded, did any one urge the representation of men as men. . . . There can be no shadow of question that populations were accepted as a measure of material interests--landed, agricultural, industrial, commercial, in short, property. . . .

In view of all this, it would seem indisputable that citizens and aliens were not as such in the minds of the men who wrote the Constitution nor of those who were delegates to the ratifying conventions. Our fathers meant to apportion the membership of the House on the basis of all who dwelt within the respective States. Property was the basis, not humanity.

⁷ In fact, the Supreme Court has suggested that states may exclude aliens from the reapportionment base without violating the Fourteenth Amendment. Burns v. Richardson, 384 U.S. 73 (1966).

for almost 200 years. Furthermore, it fails to appreciate that the enumeration clause is not about a "right to be represented" on behalf of individuals. Rather, it is a clause that regulates the distribution of power among states.⁸ In abstract political theory, Michigan might be able to complain that it has lost a representative because of the huge (legal) alien population in California. But California may properly respond: These people are as much a part of the state as U.S. citizens. They contribute to the economy, pay taxes, and use public services. To count them is not to give them rights. It is rather to recognize the benefits they provide to the nation and the burdens the state bears because of their presence.

I thus conclude that the term "whole number of persons" in the enumeration clause includes aliens. This does not mean that the Constitution requires the counting of all persons physically within the borders of a state. At any moment in time, the population of a state may include tourists, people in transit, visiting businesspeople, and others who have not established domicile in the state and do not consider the state their permanent place of abode. Traditionally, such persons have not been counted as part of the state's population for apportionment

⁸ Thus, the interests served by the clause are quite distinct from those served by the equal protection clause of the Fourteenth Amendment and Article I, section 2, paragraph 1 of the Constitution, which provides that "[t]he House of Representatives shall be composed of Members chosen . . . by the People of the several states." These clauses guarantee equality among voters within a state for state and federal elections. See Wesberry v. Sanders, 376 U.S. 1 (1964); Reynolds v. Sims, 377 U.S. 533 (1964).

purposes. The first census statute provided that "every person occasionally absent at the time of enumeration [shall be recorded] as belonging to that place in which he usually resides in the United States." This practice continues to this day. Current census forms ask respondents to identify all persons who "usually live" at the address, a phrase deemed not to include a person who has his or her principal residence elsewhere. Perhaps the best word to describe those to be counted is "inhabitants"--a term used both by the First Congress and James Madison in the Federalist Papers⁹ (Earlier drafts of the enumeration clauses used the word "inhabitants" and nothing that I have discovered in the debates of the Constitutional Convention suggests that the substitution of the phrase "whole numbers of persons" was intended to effect a substantive change.) This construction is consistent with the purposes identified above. By describing the actual resident population of a state, the term provides a reasonable measure of the state's wealth, its tax base, and its contribution to the nation. The "inhabitant" line is neutral as to citizenship, but it does require that aliens (and citizens) be residing in (not simply visiting or travelling through) the state.

Now, what does this all say about undocumented aliens? It is certainly arguable that if "residence" is the key to

⁹ See Act of March, 1790, 1 Stat. 101; Federalist No. 54 ("the aggregate number of representatives allotted to the several States is to be determined by a federal rule founded on the aggregate number of inhabitants").

counting for apportionment purposes, then the legality of the residence should not matter any more than whether or not the resident is a citizen or an alien. Under this view, resident undocumented aliens would be counted as all other "inhabitants" of a state. (Note that this is not the same thing as saying that undocumented aliens must be counted wherever they are found. The test is whether or not a person has established residence in a state. Thus, transient undocumented aliens or migrant workers who come to the U.S. for a short period of time would not be counted, just as tourists are not counted.)

Opponents of this view assert that residence is at least in part a legal status, and someone who has not been granted permission to be in the country cannot be deemed to have established residence. Furthermore, this argument runs, since undocumented aliens can be deported at any time, their continued "residence" in a state is beyond their control.

The idea that someone ought to be "legal" in order to be counted seems to accord with our general understanding about the nature of rights and entitlements. However, I think these intuitions are out of place here and should be resisted. Let me explain.

Many of those who are opposed to counting undocumented aliens seem to believe that including undocumented aliens in the apportionment base would, in effect, be giving them rights. To state it more pithily, counting undocumented aliens would make them count. Senator Shelby put it this way when he introduced S.

2013: "Does it make sense that illegal aliens who are here without the consent of the governed be given representation in Congress?" Cong. Rec. S 281 (Jan. 28, 1988).

But the argument for counting undocumented aliens is not about providing them representation in Congress. Few would assert that such aliens (or even lawful aliens) have a "right to be represented" in Congress. As mentioned above, the apportionment formula is intended to solve a problem among the states, not to establish individual rights. Viewing the apportionment problem from the state's perspective, it is not the legal status of the inhabitant that matters, but rather the total number of persons living and working in a state.

This view is fortified by a crucial fact that is often overlooked in the apportionment debate. The regulation of immigration is exclusively a federal power. Congress decides what classes of aliens may enter and the terms of their stay, and provides for the enforcement of our national borders. Border and coastal states may not police international boundaries, nor may any state declare itself closed to immigrants or seek to deport undocumented aliens within its borders. The Passenger Cases: 48 U.S. (7 How.) 282 (1849); Truax v. Raich 239 U.S. 33 (1915). Thus, the distribution of aliens (both lawful and unlawful) within the United States is beyond the control of the states. This means that states become the homes of large numbers of undocumented aliens primarily because of the actions (or inactions) of the federal government in failing to enforce the

border or to deport undocumented aliens who have crossed the border. To the extent that undocumented aliens are a burden to a state,¹⁰ it seems reasonable that they "count" toward that state's representation in the body charged with regulating their presence in the state and the nation.

Furthermore, it's not clear what theory of the enumeration clause ~~supports~~ counting legal resident aliens but not undocumented resident aliens. If one views the clause as establishing equality among members of a political community, what justification is there for counting legal residents? As will be discussed later, the inclusion of lawful resident aliens in the enumeration works the same kind of "dilution" or "distortion" that counting undocumented aliens could. Yet, to my knowledge, none of the opponents of counting undocumented aliens argues that lawful resident aliens should not be counted.

In sum, I conclude that constitutional standard for the apportionment of representatives is a function of the number of the inhabitants of each state, and that there is no reason to distinguish citizen from alien inhabitants or legal from illegal inhabitants. It is therefore my view that the Constitution does require that resident undocumented aliens be counted for apportionment purposes.

¹⁰ There is much scholarly debate about whether undocumented aliens benefit or harm the economy. It seems fairly well established that such aliens generally contribute more in taxes than they receive in government transfer payments. However, the biggest burden undocumented aliens impose may be at the local level, in terms of education and medical costs.

II. Comments on objections to counting undocumented aliens

It is important to address a fundamental misconception that pervades the apportionment debate.

Some have asserted that counting undocumented aliens for apportionment purposes constitutes a dilution of one's right to vote in violation of the constitutional norm of "one person, one vote." See, e.g., H.R. 3639 ("[T]he Congress finds that . . . by including the millions of illegal aliens in the reapportionment base for the House of Representatives[,] many States will lose congressional representation . . . thereby violating the constitutional principle of "one man [sic], one vote.") To be sure, counting undocumented aliens may have an effect on the apportionment of representatives. But it is far from clear that any such effect is a cognizable constitutional harm. Quite simply, "one person, one vote" cannot be the appropriate standard for apportionment purposes, if the standard is understood to mean that each voter's vote should have an equal chance in influencing a congressional election.

This is clear from Article I's guarantee that each state have at least one representative and that representatives be apportioned among the states. Because congressional districts cannot be drawn across state lines, there will naturally be a wide inter-state variation in the size of congressional districts. For example, congressional districts apportioned

after the 1980 census varied in size from 376,619 (Montana, Second District) to 652,695 (North Dakota, At-large). The "one person, one vote" standard applies to congressional districts within a state, not among states.

Even within states, the "one person, one vote" principle does not guarantee that each voter's vote counts equally. Under current practice, congressional districts are drawn based on total population, not on eligible voters or citizens. This means that in districts with high numbers of aliens, a voter's vote is given extra weight. To see this consider two districts, X and Y. Assume that each has 500,000 residents, 150,000 of whom are children. Assume further that district X has 100,000 aliens; district Y has 10,000. Under this scenario, there are 250,000 eligible voters in district X and 340,000 eligible voters in district Y. Thus, a vote in district X is worth substantially more than a vote in district Y. This example does not appear to be a flight of fancy. Unfortunately, the Census Bureau does not publish data on the number of citizens in each congressional district, but some rough estimate can be made from the data on the percentage of foreign born in each district. Here there is wide variation among congressional districts. On the high end, a district in Florida reports a population 52% of which is foreign born; districts in California have 29.5% and 40% foreign born. On the low end, many congressional districts report foreign born populations of less than 2%. Assuming that not all foreign born persons have naturalized and that the number of those who do

naturalize are evenly distributed across districts, these data show a substantial impact on the weight accorded a voter's vote even if congressional districts are exactly the same size.

The Supreme Court has never specifically addressed these disparities caused by uneven distribution of (non-voting) aliens.¹¹ But a declaration that "one person, one vote" requires equality in the number of eligible voters (or registered or actual voters?) would apparently require radical redrawing of congressional districts. In essence, what the Court seems to have required, consistent with the apportionment scheme that requires the counting of "persons," is not "one person, one vote" but "one representative for equally sized districts."

Given this reasoning, it is difficult to see what the "dilution" claim is all about. The weight of a vote is already "diluted" if the voter lives in a district or state with a small number of lawful aliens. Yet all seem to agree that lawful aliens should be counted for apportionment purposes. On what reasoning can counting undocumented aliens produce an unconstitutional dilution when counting lawful aliens does not?

¹¹ Although it clearly has recognized the existence of disparities and has not condemned them. Gaffrey v. Cummings, 412 U.S. 735, 747 (1973).

III. Even assuming Congress has the power to exclude undocumented aliens from the apportionment base, it would not be wise policy to do so.

Even if the Supreme Court were to read the Constitution to permit Congress to exclude undocumented aliens from the census, there are strong reasons for not doing so. This is not to say that the central argument of the opponents of counting undocumented aliens--that is, that each voter's vote should have equal weight--is frivolous or unimportant. However, I believe that the Congress sets an unfortunate precedent when it states, as a matter of national policy, that undocumented aliens are not "persons" under a clause in the Constitution. Such a declaration, of course, cannot "overturn" other decisions of the Court holding constitutional provisions applicable to undocumented aliens.¹² But such statements have important symbolic value; they become part of the common understanding, playing into anti-alien emotions in the nation at large. And they become precedents for further congressional action.¹³

¹² See, e.g. Wong Wing v. United States, 163 U.S. 228 (1896) (fifth amendment); Almeida-Sanchez v. United States, (413 U.S. 266 (1973) (fourth amendment).

¹³ This is particularly troubling because of the Court's unwillingness to impose substantive limits on Congress's power to exclude or deport aliens, or procedural limits on its power to exclude aliens. Long-term detention of asylum seekers and others at the border now is virtually beyond constitutional scrutiny. Congress should be training itself to see all persons in the U.S. as entitled to basic human rights. Writing undocumented aliens off the census slate is a backward step in that educative process.

My claim here is an attitudinal one. In Plyler v. Doe, 457 U.S. 202 (1982), the Supreme Court resisted the argument that undocumented aliens were not "persons" protected by the Fourteenth Amendment. In so doing, the Court did not amend the immigration laws or legalize undocumented aliens. Rather, it recognized the reality that this country has, and will continue to have, a large undocumented population, and that it is in the long-term interests of the U.S. to guarantee all residents basic human rights. While not counting undocumented aliens in the census does not, I believe, deny them a fundamental right, it is a symbolic step down the wrong road.

TESTIMONY OF
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EXECUTIVE DIRECTOR
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(FAIR)

BEFORE THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING:

EXAMINATION OF PROCEDURES TO
BE USED IN CONDUCTING THE 1990 CENSUS AND
TO ASSESS THE IMPACT ON THE STATE OF
MICHIGAN

JUNE 24, 1988

Mr. Chairman and Members of the Committee, I am pleased to have the opportunity to appear before you today and testify on H.R. 3814. My name is Dan Stein and I am the Executive Director of FAIR, the Federation for American Immigration Reform, a nonprofit membership organization dedicated to United States immigration issues.

INTRODUCTION

In less than two years the 1990 Census will be taken. Unless Congress takes action, the 1990 Census, like the 1980 Census, will include illegal aliens in the reapportionment figures, causing states with a relatively small illegal alien population to lose congressional seats to states with large illegal alien populations. Not only is this practice unconstitutional but it is patently unfair to United States citizens and other lawful permanent residents in that it dilutes the value of their votes.

FACTUAL BACKGROUND

Prior to 1980, the inclusion of illegal aliens in reapportionment was not an issue since illegal immigration was minimal and the Census Bureau did not actively seek out illegal aliens for census participation. As a result, illegal aliens had a negligible effect on reapportionment, failing to compel adequate attention to the matter.

However, by the 1980 census the situation changed dramatically. Since the mid-70's, the numbers of illegal aliens

has grown exponentially. In the 1980 census, illegal aliens were sought out and encouraged to come forward to "be counted" by the Census Bureau.

Millions of dollars of multilingual advertising targeting the illegal population, together with a six-month moratorium on deportation hearings essentially told the illegal aliens that they would not be "punished" for stepping "out of the shadows."

In 1980, the Census Bureau estimated that 2.056 million illegal aliens were in the United States.

As a direct result of the inclusion of these illegal aliens, both the Census Bureau and a 1984 Congressional Research Service ("CRS") study concluded that in 1980 Indiana and Georgia, both with small illegal populations, each lost one congressional seat to California and New York, states with large illegal populations.

In the upcoming 1990 Census, the trend continues: congressional representation will shift towards states with large illegal alien populations as a result of their inclusion. According to a recently released CRS preliminary report, Pennsylvania, Kansas, West Virginia, and others are at risk of losing seats to which they are otherwise entitled if the Census Bureau persists in including illegal aliens in Congressional reapportionment.

EFFECTS ON MICHIGAN

Counting illegal aliens certainly affects the people of Michigan. To be sure, it is unlikely that this state will become a major destination for illegal aliens in the near future (it ranks 21st in states with the most illegal aliens). But that is not the end of the analysis: the people of Michigan, through their elected representatives, have enacted laws fixing how many immigrants may enter the United States each year. But the Federal government has done a poor job controlling illegal immigration and Michigan's democratic will is undermined by an unjustifiable agency decision to include in apportionment any alien who is able to successfully evade the border patrol and is illegally present on Census Day. Because the number of representatives (435) is fixed by law, states must compete for the set number of representatives--each state gaining does so at the expense of another. Small numerical differences can change the priority ranking of seats. Michigan stands to lose one of its most precious resources--representation in Congress--merely because illegal aliens are pouring across the southern border. Current projections show Michigan would lose a seat if 6,000,000 illegal aliens are counted. Even if fewer are counted, Michigan's ranking for its 16th Congressional seat drops down to 420 out of 435. By 2000, the state would certainly be at risk of losing a seat solely due to the count of illegal aliens.

The Federal government has failed to control the nation's borders, notwithstanding the political will of Michigan that immigration be limited. By including illegal aliens in the Census, the Federal government subjects this state to factors beyond its political control, in a manner that infringes upon its most basic political sovereignty. Under the current plan, Michigan may truly lose control over its political future.

THE CONSTITUTION

The Constitution in Article I establishes the method for apportionment and directs that Representatives be apportioned by counting the "whole Number of Persons." This legally ambiguous language requires further interpretation.

First, the Framers did not conceive of the idea of "illegal aliens" when the Constitution was written in 1787; all aliens who could reach the isolated continent were welcome so as to populate the vast lands of colonial America. It was not until nearly a century later that the first law was enacted to restrict the admission of immigrants. If there was no such thing as illegal alien, how then could the Framers of the Constitution have intended to include them?

Second, the context within which "persons" is used in the Constitution varies greatly, causing variation in its definition. A literal translation of "persons," that is, all biological persons, is inappropriate.

Even the Census Bureau does not consistently apply its own literal definition of "persons." Specifically, the Census Bureau excludes from the census certain biologically-qualified "persons": foreign diplomats and foreign tourists.

Nor does it heed the pronouncements of the Supreme Court. By not enumerating corporations as "persons," the Census Bureau ignores Supreme Court decisions which hold that "persons" include corporations for purposes of the 14th Amendment.

However, most incredible is the Census Bureau's affirmative policy to exclude from the reapportionment figures American military and their families and U.S. civil servants stationed abroad. By so doing, these men and women, many placing their lives on the line for the United States, will have no impact on reapportionment of their own government.

The apparent rationale for this practice is that these people are somewhat difficult to enumerate, making the added expenditure of time and money unjustified.

Based upon this difficult-to-enumerate reasoning, illegal aliens also are not identified for reapportionment exclusion purposes. The result is that illegal aliens are allowed to effect the composition of Congress yet U.S. military and citizens abroad are not.

With this kind of logic, it is conceivable that the Census Bureau would also include enemy troops who happen to be present in the United States at the time of the census. It seems the Constitutional definition of "persons" bends merely to suit the administrative convenience of the Census Bureau. We need H.R. 3814

to ensure that the constitutional mandate of reapportionment is properly and consistently realized.

JUDICIAL INTERPRETATION

The inclusion of illegal aliens in reapportionment dilutes the votes of U.S. citizens, contrary to consistent court rulings against vote dilution. The creation of election districts unequally swelled by shadow populations, illegally in the country, gives more value to some than to others, thereby debasing the value of many citizens' votes.

The Supreme Court, condemning vote-diluting discrimination, enunciated the principle of "equal representation for equal numbers" in Wesberry v. Sanders. In Wesberry, Justice Black held that, "construed in its historical context, the command of Art. I, { 2, that Representatives be chosen 'by the People of the several States' means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."

While Wesberry v. Sanders does not mandate absolute equality of congressional districts throughout the country, the inclusion of large numbers of illegal aliens in the apportionment numbers does violate the principle of Wesberry by decreasing the value of some votes while increasing that of others.

The constitutionality of including or excluding illegal aliens in reapportionment enumerations has never specifically been decided by the courts. In a 1979 challenge to this practice brought by FAIR, the courts dismissed the action on technical

grounds--the merits were never reached. In that suit, however, the Census Bureau revealed their real concern: that no acceptable method of enumerating illegal aliens was available at that time.

Since the 1980 Census, new methods of enumeration have been explored. FAIR is currently suggesting the "instruction method," which adds language to the census instructions that only U.S. citizens and permanent resident aliens are to be enumerated on the form. This method allows illegal and other non-permanent resident aliens to be excluded from the actual reapportionment count without adding questions and without forcing illegal aliens to either admit their illegal status or lie. For federal funding purposes, these individuals could then be added back into the "count" through the use of long form questions or enumerator sampling, allowing estimates of the illegal population to be made, and added.

With the "instruction method" or some other reasonable method of enumeration, illegal aliens can be excluded from reapportionment, satisfying constitutional requirements, yet included for federal funding purposes, easing the economic strain placed upon cities and states with illegal populations.

CONCLUSION

The exclusion of illegal aliens from federal Congressional district reapportionment is both constitutionally mandated and desirable. Discounting these individuals is now technically feasible and nondisruptive to the conduct of the 1990 census.

The present policy of the Census Bureau, which includes illegal aliens and excludes U.S. military men and women, violates the constitutional purpose of reapportionment by counting "we, the people who happen to be in the United States on Census Day," and not "we, the people of the United States." We therefore wholeheartedly support H.R. 3814.

Testimony Presented to the
Post Office and Civil Service Committee
U. S. House of Representatives
Honorable William Ford, Chair

by

Dr. Juliette Okotie-Eboh
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Detroit, Michigan
June 24, 1988

Although a number of important events have taken place since the Department of Commerce announced that the 1990 Census would not be adjusted, most notably the introduction of Congressman Dymally's bill requiring an adjustment of the 1990 census figures to correct undercounts and overcounts, the need for census adjustment continues. For this reason, most of what follows will focus on the consequences of the undercount problem as we experience them in the City of Detroit.

Undercount is a fact of life that unfortunately the Census Bureau seems content to live with. While progress has been made in overall census enumeration, the undercount has been increasing and compounding for Blacks each decade since the Census' inception.

Simply put, the Census Bureau finds it more difficult to accurately count Blacks than Whites. Before this issue is discussed, we should first examine a number of national trends that hold true for Blacks and Whites, but may severely exacerbate the ongoing undercount problem for Blacks.

The Census Bureau must change its perspective about what are the "norms" for family structure and living patterns, urban housing patterns, as well as the broader urban neighborhood environment.

For example, the notion that America consists for the most part of nuclear families with a wife/mother at home to promptly mail back the census questionnaire or welcome the census enumerator will certainly not be the reality for 1990, if it ever was a true picture of our society. Right now, over one-half of the women in this country work outside of the home. Moreover, almost one-half of the households in the United States consists of single-parent families. These statistics imply that there is a different life-style or "norm" that the Census Bureau must surely be mindful of in 1990, especially when assessing the return rate for census forms or dispatching enumerators for follow-up interviews.

It is becoming increasingly typical for young adults (oftentimes with children), single or married, to temporarily or permanently reside with their in-laws, bringing with them their own sources of income. In this sense, there may be more than one family living at what ostensibly appears to be a single-family residence. It is important to note that this phenomenon occurs in middle-income families, as well as in poor families.

As regards urban housing patterns, in cities like Detroit, there are numerous examples of the conversion of industrial and business facilities to residential lofts and apartments. In addition, since we have so many large single-family homes, it is not uncommon for people to live in the adjacent carriage houses or servants' quarters. There may not be a separate address for these quarters, since the tenants' mail is sent to the homeowners' address.

Lastly, we anticipate (as was the case in 1980), that counting the homeless will present a major problem for the Census Bureau. Hopefully, in Detroit the Bureau will consult with us to get an accurate listing of homeless shelters as well as areas where the homeless are more likely to be found.

We should be mindful of the fact that the foundation for the undercount of poor people, Blacks, and other minorities starts at the address list development phase of the Census Bureau operations. It is unlikely for a person to appear on commercial vendor lists (which are purchased by the Census Bureau) if he or she does not either own an automobile, a telephone, a credit card, or has never purchased an item by mail. In the eyes of the Census Bureau, that person does not exist, since they lack economic visibility.

The undercount of Blacks in each decennial census is a problem that has its origins in the first census. In that head count, Blacks were considered to be three-fifths of a person. Consequently, only 60 percent of Blacks were to be counted. This intentional undercount lay the foundation for the economic and political disenfranchisement of Blacks. However, it has also given rise to a pattern of subsequent census undercounts, the legacy of which we are grappling with today.

Therefore, rather than focus on why Blacks "distrust" the Census process, or create a self-fulfilling prophecy of why Black people are "hard to count," we must ensure that the enumeration procedures in urban areas like Detroit are accurate, complete, and fair, with no predetermined acceptance of a Black undercount.

Toward this end, the Census Bureau must begin now to recruit enumerators from our local neighborhoods. Perhaps this will help to reduce the workers' fears of moving about in unfamiliar neighborhoods. Moreover, their knowledge of the local terrain, its families, and housing patterns, should help to improve the count.

In recognition of the persistent undercount problem, and perhaps in response to the number of lawsuits filed in 1980, early in this decade the Bureau of the Census undertook an ambitious research program. Over the past several years, a great deal has been accomplished. The combined use of demographic analysis and a post-enumeration survey, along with sophisticated computer-assisted matching techniques and computer algorithms, have made adjustment technically feasible. The Census Bureau now knows how to produce adjusted census counts which are an improvement over the raw, unadjusted, numbers.

There remain problems with operational feasibility. The Bureau's legislative mandate to provide the final count by December 31, 1990 places serious constraints on the process. Procedural changes are required in order to combine the work needed for adjustment with the work needed for completion of the census count itself. These procedural changes need to be developed and

tested. Activities along these lines should have been under way over the past year, and testing should have been taking place in the Dress Researsal Census currently in process in St. Louis and two other areas.

Instead, all forward progress has stopped. No changes in procedure are being tested in St. Louis. The Census Bureau and the Commerce Department are not requesting the large Post-Enumeration Survey needed to measure undercount well and develop adjusted counts. Adjustment related research is a low priority within the Census Bureau.

In 1980, the undercount of Blacks in central cities across the United States was estimated to be 11.3% and the undercount of Hispanics was put at 10.3%. Congressman Dymally has stated that the differential undercount between Whites and Blacks has remained at 5.2% each decade since 1940.

What is the impact of failure to adjust on Detroit and Michigan? In 1980 we argued that the 1980 undercount for Detroit was almost 11 percent. We estimate that the 1990 undercount for Detroit will increase within the range of 15 to 22 percent.

This means that Detroit has received less than its fair share of all formula funds distributed in this decade, whether from Federal dollars passed through the State, or from State funds themselves, such as gas and weight taxes. This means that Detroit has had at least two seats less than it should have had in the State Legislature.

Other testimony presented here today indicates that Michigan is projected to lose one of its 18 Congressional seats, and is at great risk of losing two. A population of 130,000 is more than 20 percent of one Congressional District. Thus, a correction of the undercount through adjustment may well make the difference between Michigan having 16 seats or 18 seats in Congress during the last decade of this century.

Detroit and Michigan have many problems for which solutions are not always readily apparent. National policies and practices which appear to favor development of the "Sun-belt," at the expense of the "Snow-belt," have meant that jobs and people have left the State. It is so much easier to build new facilities on open land in states where unions are not a tradition and low wages prevail. It is so easy to leave behind the rusting, old infrastructure of the North. The situation seems inherently unfair.

There is one "unfairness" that can be resolved much more easily. Census adjustment is technically feasible and can be made operationally feasible. It is right and it is fair. It should be done, since it adheres to the principle of "one man, one vote."

June 24, 1988

Prepared Testimony of**Allen L. Schirm, Ph.D.**

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1. Introduction

In recent years, there has been much heated debate about the conduct of the United States decennial census. A central issue in this debate concerns the well-documented differential undercounting of racial and ethnic groups and the question of whether census counts should be adjusted by statistical methods.

The arguments for and against adjustment are familiar. If undercounts are unequal among demographic groups, such resources as federal funds and congressional seats, which are allocated to administrative units partly or wholly on the basis of their estimated sizes, are inequitably distributed. Balanced against these inequities are a variety of procedural, administrative, and technical problems posed by census adjustment.

Although the Commerce Department has opted against adjustment of the 1990 census, Congress has not yet made a final determination about the desirability of adjustment. Indeed, no decision is likely to be truly final because the attractiveness of adjustment will change with shifts in the national demographic structure, the state of technical knowledge, and, even, the political climate. There is surely widespread agreement, however, that any decision, be it for just the next census or the next several, should be well-informed.

One fundamentally important piece of information to consider when making the adjustment decision is the effect of census adjustment on the accuracy of population estimates. Will adjustment make our population figures more or less accurate?

In my research, conducted jointly with Samuel H. Preston, Professor of Sociology at the University of Pennsylvania, I have sought to answer this basic, yet difficult question. Before I discuss my answers to it, I would draw attention to Appendixes A and B which describe very briefly how census figures can be statistically adjusted and what is meant by accuracy in this context.

A third appendix, Appendix C, explores the effect of adjustment on congressional apportionment when undocumented resident aliens are excluded from state population estimates.

Since the census of 1950, several statistical methods for adjusting census counts have been proposed. In my research, I consider one of these methods called the synthetic method. This method assumes that a national undercount estimate for a demographic group, such as blacks, pertains in all geographic areas, such as states, for the purposes of adjusting census counts for those areas. The synthetic method has been widely advocated by proponents of adjustment because it is simple, technically sound and feasible, and, arguably, the best method currently available. I examine the effects of synthetic adjustment for differential undercounting of blacks and nonblacks on the accuracy of the estimated proportionate geographic population distribution. This distribution, which gives relative state population sizes, is a principal basis for allocating federal resources among the states.

2. The Effects of Synthetic Adjustment on the Overall Accuracy of Population Estimates

To proclaim with certainty that adjusted population estimates are more accurate than census estimates requires knowledge of the true population figures. If such values were known, however, they would surely be used in distributing federal resources, and there would be no issue of estimation. There would be no cry for adjustment from any party, although there might well be petitions for revision of allocation formulas and calls for excluding some persons, such as undocumented aliens, from the population figures used in certain formulas.

For our purposes, the implication of not knowing exactly how many persons reside in any given state is that it is impossible to say that adjusted estimates either are or are not more accurate than census estimates. Our ignorance permits us to answer, at best, questions of the following sort. How often might we expect adjusted estimates to be more accurate than census estimates? And, how much more accurate are adjusted estimates likely to be, on average?

I have obtained answers to these questions using the methods of statistical simulation. These methods also allow me to determine how sensitive my answers are, that is, how my findings might change if, for example, demographic changes made it more difficult to measure national undercounts. I will discuss the issue of sensitivity after describing my principal findings.

Basic Results

All of my results indicate that, more often than not, synthetic adjustment will improve the accuracy of population estimates. The improvements, however, seem likely to be modest, on average. Permit me now to elaborate these general statements.

As I discuss in Appendix B, there are several criteria by which we can measure the relative accuracy of population estimates. Adopting one of these elicits the following question. How often will adjusted estimates be more accurate for a majority of the nation's residents? According to my simulation model, the answer is about 2 out of every 3 times that adjustment is used.

Three points about this answer are noteworthy. First, a majority only means more than 50 percent; it could be that 53, 57, 61, or 70 percent of the country's residents, for example, live in states whose estimates are made more accurate by adjustment. All that I have said so far is that something like this will happen roughly two-thirds of the time, say in 1990, 2000, 2020, and 2030 out of the 6 censuses from 1990 to 2040 if we adjusted all 6 times.

Second, the answer given also implies that adjusted estimates will be less accurate for a majority of the nation's inhabitants approximately 1 out of every 3 times. Put another way, about one-third of the time, adjusted estimates would be more accurate than census estimates for less than 50 percent of the persons residing in this country. In such instances, say in 2010 and 2040, the percentage living in states with improved estimates could be 35 or 48.

Finally, similar conclusions are implied by two alternative measures of accuracy. According to one of these, the squared error criterion described in Appendix B, adjusted estimates are expected to be more accurate than census estimates about two-thirds of the time. According to the other, the absolute error criterion described in Appendix B, adjustment should improve accuracy approximately three-quarters of the time.

My simulation model can tell us not only how often adjusted estimates will be more accurate but also how much more accurate they would be. In particular, the following question can be answered. On average, what percentage of the national population resides in states whose estimates will be made more accurate by adjustment? According to my simulation results, the answer is about 54 percent.

Four points deserve mention. First, 54 is an average. For the census years 1990 to 2040, for example, the percentages could be 53, 57, 35, 61, 70, and 48. The average of these 6 values is 54, and 4 of them, two-thirds, are above 50. The latter is consistent with the finding discussed earlier.

Second, the answer given also implies that, on average, 46 percent of the country's inhabitants reside in states whose estimates will be made less accurate by adjustment.

Third, although the absolute and squared error criteria do not yield such easily interpretable measures of how much more accurate adjusted estimates would be, these two criteria also seem to imply rather small expected gains in accuracy from adjustment.

A final point brings together both the size of the gain or loss in accuracy and the frequency of gains or losses. As stated, the percentage living in states with more accurate estimates from adjustment would be less than 50 about one-third of the time. What cannot be garnered from this figure, but what, in fact, I find is that the percentage with more accurate estimates from adjustment would be much less than 50 a nontrivial fraction of the time. In one extreme case, we would expect that less than 40 percent of the nation's residents live in states with more accurate estimates about 1 out of every 7 times adjustment is used. For more typical circumstances, the figure is roughly 1 out of every 10, or once every century of use. It would seem, therefore, that adjustment will sometimes produce estimates that are much less accurate than the census estimates. While on this subject of large adjustment effects, I should add that, perhaps not surprisingly, adjustment will sometimes yield estimates that are much more accurate than census estimates. Nevertheless, even on average, 43 percent of the nation's residents live in states whose estimates would be made less accurate by adjustment under the most favorable circumstances simulated.

Sensitivity of Results

Without the benefit of hearing the numbers presented so far, the opponents of adjustment have rejected this policy on principle. Their two primary objections are the following. First, undercounts are not constant from state to state, and, second, primarily because of illegal immigration, national undercounts are measured with substantial error.

Why are these issues of concern? They strike at the heart of the synthetic method of undercount adjustment. As described in Appendix A, a central assumption of the synthetic method is that all states have the same undercount for each racial or ethnic group. If the black undercount is 5 percent for Michigan, it is 5 percent for Minnesota, for California, and, indeed, for the nation as a whole. There exists interstate variation in census coverage for blacks when different states have different undercounts. For example, Michigan's black undercount could be 6 percent while Minnesota's is 3 percent. If the national black undercount is 5 percent, the synthetic method of adjustment will increase the size of Michigan's black population by too little and the size of Minnesota's black population by too much, although it can be shown mathematically that adjusted estimates of the black populations would be more accurate than census estimates for both states in this example. Whether corresponding estimates of the proportionate distribution would also be more accurate cannot be determined so easily. Nevertheless, while the opponents of synthetic adjustment are correct in observing that undercounts do vary across states, their observation does not necessarily imply that adjusted estimates will be less accurate than census estimates.

Another assumption of the synthetic method of adjustment is that national undercounts for racial and ethnic groups can be measured perfectly. As noted before, if the national black undercount is 5 percent according to our calculations, the synthetic method adjusts each state's black population as though it were undercounted by the census by 5 percent. Suppose, however, that the national black undercount is really 6 percent. Will adjustment produce less accurate estimates when based on the incorrect figure of 5 percent than when based on the correct figure of 6 percent? One suspects that it would. This does not necessarily imply, however, that the adjusted estimates obtained using the 5 percent figure will be less accurate than the census estimates.

All of this brings us to a fundamental question. Are the basic results given before, that is, the two-thirds and 54 percent figures, sensitive to, first, interstate variations in census coverage and, second, measurement errors in national undercount estimates? According to my simulation model, my findings are not very sensitive at all. The gain in accuracy from using adjusted estimates instead of census estimates would be only slightly less when there are greater interstate variations in census coverage and/or greater measurement errors in national undercount estimates. I would add to this that, on both counts, I have considered what appear to be truly extreme circumstances. In particular, I simulate one case in which there are 2 or 3 times too many undocumented resident aliens and, therefore, very large errors in measuring national undercounts. On balance, available empirical evidence suggests that the extremes simulated almost certainly bracket the truth.

I do not want to give the impression that adjustment would perform equally well under all circumstances. As one would expect, the gains in accuracy would be somewhat greater when its basic assumptions are more nearly satisfied. Nevertheless, although the opponents of adjustment correctly argue that these assumptions are not perfectly consistent with the real world and, therefore, not strictly valid, the relative effects of adjustment on the accuracy of population estimates would be roughly the same whether or not the central assumptions of the method are violated, perhaps severely. The two objections to synthetic adjustment noted earlier should not be grounds for rejecting this method of estimation.

3. The Effects of Synthetic Adjustment on Congressional Apportionment

Because the original purpose of the decennial census was and a primary purpose of it still is to provide a basis for apportioning the House of Representatives, it is important to explore the implications for congressional apportionment of synthetic adjustment for differential undercount. The question that I will answer is the following. Would congressional apportionment have been

different in either 1970 or 1980 had census estimates been adjusted? As before, I will consider only the synthetic method of adjustment.

Typical estimates of the national black and nonblack undercounts for the 1980 census are 4.8 and -1.1 percent. If the census counts had been adjusted on the basis of these estimates, apportionment would have been altered; New York would have lost one seat in the House to Georgia. Congressional delegations for the other states would have remained unchanged in size.

Some evidence suggests that nonblack Hispanics are undercounted at a rate similar to blacks. Suppose that we had adopted this as a working assumption and adjusted the 1980 census counts recognizing two differentially undercounted groups: blacks and nonblack Hispanics as one group and persons who are neither black nor Hispanic as the other group. The allocation of House seats so obtained would have been identical to that based on the figures originally reported to the president for purposes of apportionment.

No question in the 1970 census itself permits identification of persons of Spanish heritage. So, only an adjustment for differential undercounting of blacks and nonblacks would have been possible. Such an adjustment using undercount estimates of 7.6 and 1.5 percent, respectively, would have implied a different allocation of House seats from that obtained from the counts reported to the president. Instead of both states having 6 representatives, Connecticut would have had 7 and Oklahoma would have had 5.

It is important to note that my adjusted state population estimates are not calculated from the census estimates reported to the president; the latter are not available broken down by racial and ethnic group. Adjustments are made, instead, to the census population estimates reported in Census Bureau publications issued about three years after the census. These census figures are revised values of the estimates transmitted to the president. Interestingly, the House would have been apportioned differently in 1970 had the revised census estimates been used instead of the estimates reported to the president; Connecticut would have gained a representative at the expense of Oklahoma. This allocation of House seats is the same as that implied by the adjusted estimates, demonstrating that, after revision, adjustment would have produced no changes. Thus, in 1970, revision of the original census estimates would have had a greater impact on apportionment than adjustment of the revised census estimates. I note that this would not have been so in 1980. In that year, the revised census estimates would have given the same allocation of House seats as the census estimates transmitted to the president, although, as shown, certain adjustments to the revised estimates would have resulted in reallocations.

An interesting exercise is to ascertain whether the effects of adjustment on congressional apportionment would have been different had national undercounts been different from those actually estimated. The results of such an experiment appear in Table 1 where I consider synthetic adjustment for differential black/nonblack undercount in 1980. Holding constant the nonblack undercount at -1.1 percent, I calculate adjustment effects on apportionment for black undercounts of 3.8, 4.8, and 5.8 percent. Holding constant the black undercount at 4.8 percent, I consider nonblack undercounts of -2.1, -1.1, and -0.1 percent. In all six cases, New York would lose 1 seat and Georgia would gain 1 seat. In the two cases with the largest differential between black and nonblack undercounts, Alabama would gain 1 seat and Colorado would lose 1 seat. Thus, there is evidence that had the gap between black and nonblack national undercounts been greater in 1980, the effect of adjustment on congressional apportionment would have been greater. Although the results are not contained in Table 1, a similar exercise for 1970 reveals that this would not have been the case for that census.

Table 1
The Effect of Synthetic Adjustment for Differential Black/Nonblack Undercount
on Congressional Apportionment in 1980: Illustrative Calculations

National Undercounts (percent)		Adjustment Effect on Apportionment Number of Seats Gained (+) or Lost (-)
Black	Nonblack	
3.8	-1.1	NY -1, GA +1
4.8	-1.1	NY -1, GA +1
5.8	-1.1	NY -1, GA +1, AL +1, CO -1
4.8	-2.1	NY -1, GA +1, AL +1, CO -1
4.8	-1.1	NY -1, GA +1
4.8	-0.1	NY -1, GA +1

As shown, adjustment potentially affects apportionment. Although this is an issue to consider in assessing adjustment, it should not be separated from the issue of estimation accuracy nor should it be considered to the virtual exclusion of accuracy for at least two reasons. First, a vast array of federal resources other than congressional seats are allocated on the basis of population estimates. Second, congressional seats are much like other federal resources in certain respects, and if two sets

of estimates are available at the time House seats are to be allocated, the more equitable procedure would be to apportion on the basis of the more accurate estimates.

4. Discussion

Before summarizing my findings on the effects of undercount adjustment, I would like to discuss very briefly certain limitations of my study. The most important is that my results inform, in the strictest sense, only a rather specific policy decision, namely, the choice between no adjustment on the one hand and synthetic adjustment at the state level for differential black/nonblack undercount on the other.

For the allocation of congressional seats, it is state population estimates that are of concern. For the allocation of other federal resources, however, population estimates for localities are required. Although the synthetic method would almost certainly have to be used for local-level estimation if the census were to be adjusted in 1990, my results do not necessarily imply that adjusted estimates would be more accurate than census estimates for localities.

As for the restriction to synthetic adjustment, there are, in fact, many sources of census coverage estimates along with many statistically reasonable methods for using such estimates to adjust census figures. One class of population estimators, called by some compromise estimators, takes estimates produced by other methods and combines them in, it is hoped, an optimal way. How alternatives to synthetic adjustment are likely to perform in practice is not known; what is required is an analysis similar to mine for the synthetic method. My results concerning the synthetic method could then serve as a standard against which to gauge the performance of alternative procedures. If one of these is ever used to adjust census estimates, it means that an estimator better than the synthetic estimator has been identified and, presumably, that the many problems associated with adjustment via products of the Post-Enumeration Survey program have been overcome.

Another question arising in any attempt to adjust for differential undercounting involves the number of racial and ethnic groups to recognize. My analysis considers two groups: blacks and nonblacks. There is at least one other group, however, for which the undercount is a salient issue, and this group consists of nonblack Hispanics. Although there are certain problems concerning the measurement of this group's undercount even at the national level, my research suggests that synthetic adjustment would result in larger gains in accuracy than those described earlier if differential undercount of nonblack Hispanics relative to other nonblacks were recognized in the adjustment process.

5. Conclusion

According to any standard considered, synthetic adjustment will usually improve the accuracy of population estimates under almost any set of plausible circumstances. Whether a two-thirds probability of an improvement of modest size is sufficient to justify adjustment is not, however, a statistical or demographic question. Accuracy, moreover, is only one of many criteria to consider. Nevertheless, if the Commerce Department maintains its present policy and chooses not to adjust at all in 1990, the gains in accuracy to be expected from synthetic adjustment will be forfeited.

Appendix A
The Synthetic Method of Adjustment

As noted in the main text, my research studies the synthetic method of undercount adjustment, probably the most widely advocated adjustment procedure, at least until very recently. To show precisely how the synthetic method adjusts population estimates obtained from the census, I have provided Figure A1. This figure describes synthetic adjustment of Michigan's population for differential undercounting by race. For simplicity, my analysis distinguishes between two races: black and nonblack. In this appendix, I will, without prejudice, refer to nonblacks as whites for ease of exposition.

Figure A1 displays the mathematical formulas for synthetic adjustment. As shown, Michigan's total population after adjustment is its black population after adjustment added to its white population after adjustment. How do we get these adjusted black and white populations using the synthetic method? For each race, we multiply the census figure for Michigan by an adjustment factor. To get the adjustment factor for blacks, for example, we divide our estimate of the true black population for the entire United States by the census estimate of the nation's black population. An estimate of the true national black population would be obtained, typically, by demographic analysis of vital statistics data.

The method can be made somewhat more concrete by studying a numerical example, and one is given at the bottom of Figure A1. Suppose, for the sake of argument, that 26 million blacks are counted in the census, but demographic analysis shows that there are really 27.3 million blacks living in the United States. Then, the census has undercounted the number of blacks at the national level. If the census counts 201 million whites while, according to demographic analysis, there are only 199 million whites, the census has actually overcounted the white population at the national level.

From these numbers, we can calculate adjustment factors for each race. The black adjustment factor is 1.05. Multiplying Michigan's black population according to the census by this adjustment factor of 1.05 is the same as raising Michigan's black population by 5 percent. Continuing with the example, you can see that the white adjustment factor is 0.99. Multiplying Michigan's white population from the census by this adjustment factor of 0.99 is equivalent to reducing Michigan's white population by 1 percent.

So, for Michigan, the adjusted black population is 5 percent higher than the census black population and the adjusted white population is 1 percent lower than the census white population.

Figure A1
Synthetic Adjustment of Michigan's Population
for Differential Black/White Undercount

adjusted MI population = adjusted MI black population + adjusted MI white population

where

adjusted MI black population = census MI black population $\times$ black adjustment factor

adjusted MI white population = census MI white population $\times$ white adjustment factor

black adjustment factor = "true" national black population $\div$ census national black population

white adjustment factor = "true" national white population $\div$ census national white population

Illustrative Numerical Example:

Suppose that

census national black population = 26,000,000

"true" national black population = 27,300,000

$\Rightarrow$ blacks are undercounted by the census for the nation as a whole

census national white population = 201,000,000

"true" national white population = 199,000,000

$\Rightarrow$ whites are overcounted by the census for the nation as a whole

Then,

black adjustment factor = $27,300,000 \div 26,000,000 = 1.05$

$\Rightarrow$ raise Michigan's black population by 5 percent

white adjustment factor = $199,000,000 \div 201,000,000 = 0.99$

$\Rightarrow$ lower Michigan's white population by 1 percent

What is important to understand is that this is true for every state, not just Michigan. Given the numerical values of this example, the synthetic method would raise each state's black population by 5 percent and lower each state's white population by 1 percent. No attempt is made to estimate each individual state's black and white undercounts.

It may not be apparent at this stage why the population distribution produced by synthetic adjustment is any different from the population distribution produced by the census. This adjustment method does, after all, use the same adjustment factors in each state. The reason that the adjusted and census population distributions are different is that different states have different racial compositions. Increasing the black population by 5 percent will have a much larger impact on the total state population in Michigan than in, for example, Minnesota because a much larger proportion of Michigan's population is black. At the same time, decreasing the white population by 1 percent will have a much larger impact in Minnesota than in Michigan because a larger proportion of Minnesota's population is white.

This point is made more clear by Figure A2. That figure describes the synthetic adjustment for differential black/white undercount of the populations of Michigan, California, and Minnesota. The calculations from the bottom of Figure A1 are repeated at the top of Figure A2. As we saw before, the black adjustment factor is 1.05 and the white adjustment factor is 0.99.

To get an adjusted estimate of a state's black population, we take that state's black population according to the census and multiply it by the black adjustment factor of 1.05. Likewise, to get an adjusted estimate of a state's white population, we take that state's white population according to the census and multiply it by the white adjustment factor of 0.99. The total adjusted population for the state is simply the adjusted black population added to the adjusted white population.

In Figure A2, I have performed these calculations for Michigan, California, and Minnesota. In the case of Michigan, the census black population is 1,199,000. Multiplying this by 1.05 gives the adjusted black population which, when rounded, is 1,259,000. The census white population of 8,063,000 multiplied by 0.99 implies an adjusted white population for Michigan of 7,982,000. Adding 1,259,000 and 7,982,000 gives 9,241,000, the total adjusted population of Michigan.

What effect does synthetic adjustment have on a state's population and how does this effect compare to the effects in other states? For the example that we have just considered, the answers are to be found at the bottom of Figure A2.

Compared to the census figures, synthetic adjustment has lowered Michigan's total population by 0.23 percent, has lowered California's total population by 0.54 percent, and has lowered Minnesota's total population by 0.91 percent. Therefore, among these three states, adjustment favors Michigan the most and Minnesota the least.

Figure A2
Synthetic Adjustment of Michigan's, California's, and Minnesota's Populations
for Differential Black/White Undercount: An Illustrative Example

Suppose that

$$\begin{aligned} \text{census national black population} &= 26,000,000 \\ \text{"true" national black population} &= 27,300,000 \\ \Rightarrow \text{black adjustment factor} &= 27,300,000 \div 26,000,000 = 1.05 \end{aligned}$$

$$\begin{aligned} \text{census national white population} &= 201,000,000 \\ \text{"true" national white population} &= 199,000,000 \\ \Rightarrow \text{white adjustment factor} &= 199,000,000 \div 201,000,000 = 0.99 \end{aligned}$$

Then,

	Population Estimates	
	Census	Synthetic Adjustment
Michigan		
Black	1,199,000	$1,199,000 \times 1.05 = 1,259,000$
White	8,063,000	$8,063,000 \times 0.99 = 7,982,000$
Total	9,262,000	9,241,000
California		
Black	1,819,000	$1,819,000 \times 1.05 = 1,910,000$
White	21,849,000	$21,849,000 \times 0.99 = 21,631,000$
Total	23,668,000	23,541,000
Minnesota		
Black	53,000	$53,000 \times 1.05 = 56,000$
White	4,023,000	$4,023,000 \times 0.99 = 3,983,000$
Total	4,076,000	4,039,000

State	Census Population		Percent Difference Between Census And Adjusted Populations
	Percent Black	Percent White	
Michigan	12.95	87.05	0.23
California	7.69	92.31	0.54
Minnesota	1.30	98.70	0.91

This exercise brings to light two important points. First, if blacks and whites are, respectively, undercounted and overcounted by the census to the extent that we have assumed for the purposes of illustration, nearly all states will lose population on account of synthetic adjustment. Why? The answer is that whites constitute a large majority and blacks a small minority of the total population in most states, including the three considered in the example. And, while adjustment increases the size of the black minority by 5 percent, this is not enough to compensate for the fact that it decreases the size of the white majority by 1 percent. The total populations of most states, therefore, will decrease. Could a state's population ever increase on account of adjustment? It can be shown mathematically that, for black and white adjustment factors of 1.05 and 0.99, synthetic adjustment would increase a state's total population if and only if more than 16.67 percent of that state's residents were black according to the census. This was true in 1980 for Alabama, the District of Columbia, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, and Virginia. For reasons given in Appendix B, we may be more interested in the proportion of the nation's population living in a given state than in the number of people living in that state per se. That raises the following question. Which states would have their proportions increased by a synthetic adjustment for differential black/nonblack undercount? It can be shown mathematically that, if the black adjustment factor exceeds the white adjustment factor, synthetic adjustment would increase a state's proportion if that state has a greater fraction of black residents than the country as a whole according to the census. In 1980, about 11.70 percent of the United States population was black. The states with higher percentages of blacks were Alabama, Arkansas, Delaware, the District of Columbia, Florida, Georgia, Illinois, Louisiana, Maryland, Michigan, Mississippi, New Jersey, New York, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Synthetic adjustment would have increased the estimated proportions of these states; it would have decreased the estimated proportions of all of the other states.

A second point is that, when the black adjustment factor is larger than the white adjustment factor, adjustment will be more favorable to states with larger proportions of black residents. The qualification in the preceding statement is equivalent to saying that the black undercount for the entire United States exceeds the white undercount for the entire United States. As shown in Figure A2, Michigan, that state of the three considered with the largest proportion of black residents, experiences the smallest population decline because of adjustment. Minnesota, with the smallest proportion black, experiences the largest population decline. California falls in between with respect to both proportion black and population change due to adjustment. Thus, the argument made earlier about the relative effects of adjustment is confirmed by the numerical example.

We observed before that national undercounts and overcounts correspond to synthetic adjustment factors greater and less than 1, respectively. It might be useful to conclude this appendix by noting the exact functional relationship between undercounts and adjustment factors. If, as in the previous example, the black adjustment factor is 1.05, the national black undercount is 1 minus the quantity 1 divided by 1.05 or 4.8 percent. Conversely, a black undercount of 4.8 percent for the entire United States implies a black adjustment factor of 1.05. The white adjustment factor of 0.99 implies a national white overcount of 1.0 percent and vice versa, an overcount of 1.0 percent and an undercount of -1.0 percent being equivalent.

*Appendix B**Measuring the Accuracy of Population Estimates*

A central objective of my research is to determine whether adjustment will make population estimates more or less accurate. After specifying how we intend to adjust census figures, we have to be precise about what we mean by accuracy and how we will measure accuracy.

Because federal resources are allocated on the basis of relative population sizes, that is, on how large Michigan, for example, is compared to the other states, principal concern is with the proportionate geographic population distribution. This distribution is characterized by either 50 or 51 numerical values, depending on whether the District of Columbia is included. Each value gives the proportion of the United States population residing in the particular state in question. It is calculated by dividing the estimated state population by the estimated national population.

No one knows exactly how many persons, in proportionate terms, live in any given state. Therefore, the value must be estimated. Because different methods could and, almost certainly, would yield different numerical estimates, the issue of accuracy arises. One estimated value may be closer to the true value than another.

Numerous methods of population estimation have been proposed. I consider two such methods: the census and synthetic adjustment. I seek to answer the following question. Are census or synthetic estimates more accurate?

It is simplest to think of measuring accuracy in two steps. In the first step, we consider each individual state. Suppose that we have chosen, for the moment, Michigan. Is Michigan's census or synthetic estimate closer to the true value? If Michigan truly has 4.0 percent of the nation's population and the census estimates 4.4 percent while the synthetic method estimates 4.2 percent, the adjusted value is more accurate. How much more accurate is a question to which we will return shortly.

The previous example makes clear an important point. A more accurate estimate is not necessarily better for the residents of Michigan in the sense of giving them claim to more federal resources. An adjusted estimate may be greater or less than a census estimate, and which is more accurate can be determined only by comparison to the true value.

Obviously, if the adjusted estimate is more accurate than the census estimate for every state, it can be argued unambiguously that adjustment improves accuracy. But, what if adjusted estimates are less accurate for some, but not all, states? If adjusted values are much more accurate than census values for, say, 47 states and just a little less accurate for 3 states, we might still agree that

adjustment improves accuracy. Without sound scientific research, there is no reason to expect, however, that we would be faced with such a clear picture. Conceivably, adjusted estimates might be more accurate in 28 states and less accurate in 22 states. What conclusion do we draw then concerning the effect of adjustment on the entire population distribution?

Before continuing, I should draw attention to a basic premise underlying my argument. This premise is that we are, ultimately, interested in how adjustment affects the entire population distribution and not how it affects just one individual state.

The implication of this premise is that we have to combine the effect of adjustment in Michigan with the effect of adjustment in California with the effect of adjustment in Minnesota and so forth in order to determine whether adjustment has enhanced or diminished the accuracy of population estimates for the country as a whole. There are several reasonable ways to aggregate across states the effects of adjustment.

One conventional statistical approach is to add up state absolute estimation errors. A simple example shows how this works. Suppose that 4.1 percent and 1.8 percent of the nation's residents live in Michigan and Minnesota, respectively, according to the census but that the true percentages are 4.2 and 1.7. Then, the absolute estimation error in Michigan is 0.1 as is the absolute estimation error in Minnesota. That is, we ignore the fact that the Michigan error is an underestimate and the Minnesota error is an overestimate. In both states, the census is off by 0.1 percentage points. The total error for the two states is 0.1 plus 0.1 or 0.2 percentage points. After we have added up across all states the errors in the census estimates and, separately, the errors in the adjusted estimates, we compare the two sums. If the sum of census errors is larger, adjustment enhances accuracy according to the absolute error standard.

Another conventional statistical approach is to sum state squared errors. For our previous example, the squared census estimation error in Michigan is 0.1 times 0.1 or 0.01. For Minnesota, the squared error is -0.1 times -0.1 , which is also 0.01. The total error is 0.01 plus 0.01 or 0.02. Had the census estimated Minnesota to have 1.9 percent of the nation's residents, the squared error for Minnesota would have been 0.2 times 0.2 or 0.04. So, when a state's absolute error is twice as large, 0.2 compared to 0.1, its squared error is four times as large, 0.04 compared to 0.01. The squared error measure, accordingly, is typically proposed by those who are willing to accept several small under- or overestimates in order to avoid one large under- or overestimate.

In my research, I have assessed the effects of adjustment using both the absolute and squared error criteria. I have also proposed an alternative that aggregates state errors in the following way.

Assume, as with the previous measures, that we regard under- and overestimates as equally severe. For a given state, say Michigan, the adjusted population estimate either is or is not more accurate than the census estimate. If it is more accurate, all Michigan residents have a more accurate population estimate on account of adjustment. If it is not more accurate, no Michigan resident has a more accurate population estimate on account of adjustment; indeed, all Michigan residents have a less accurate estimate because of adjustment in this instance. In other words, either all or none of the residents of Michigan have a more accurate population estimate after adjustment. We can apply similar logic for all of the other states and, then, sum, across all states, how many persons have a more accurate estimate due to adjustment. Each state contributes either zero or its total population to the sum because all of its inhabitants are affected by adjustment in the same way. Calculating the sum described and dividing by the population of the entire country indicates what percentage of the nation's inhabitants reside in states whose population estimates are made more accurate by adjustment. If the value so obtained exceeds 50, indicating a majority, it seems reasonable to argue that, overall, adjustment produces more accurate estimates.

To determine whether and by how much adjustment will enhance the accuracy of the entire population distribution, we must, as argued, specify a measure of accuracy that aggregates estimation errors from all states. Adding up such errors, however, raises fundamental questions. How much weight should be attached to a given state's error? Should the weight be proportional to the state's population so that an error of given size is regarded as more important if it pertains to more people? Or, should each state be treated equally regardless of size? These questions cannot go unanswered because I find that the gains in accuracy expected from adjustment may appear larger or smaller, although perhaps not substantially so, when one weighting scheme is used instead of another. A clear picture of the effects of adjustment can be obtained only when a single measure of accuracy has been adopted. There is no statistical basis, however, for accepting one measure of accuracy from among the many that are logically acceptable. Although statisticians and demographers can offer recommendations, Congress, representing the public, must ultimately determine how errors are to be weighted because this is principally a question of social equity as opposed to statistical accuracy.

The argument calling for a congressional mandate is given further support by my finding that how large we judge the gains in accuracy expected from adjustment to be also depends somewhat on how errors are calculated. For example, the absolute and squared error criteria do not agree exactly as to how often adjusted estimates are expected to be more accurate than census estimates. Although analyses of estimation methods can consider several different measures of accuracy, just as my study has, it will be easier to assess the benefits and costs of adjustment if its effect on accuracy is judged in terms of a single standard.

*Appendix C**Congressional Apportionment, Synthetic Adjustment, and Undocumented Aliens*

It is well-known that some, but not all, undocumented aliens residing in the United States are counted in the decennial census. It is equally well-known that the total number of undocumented resident aliens and the number counted in the census are not distributed uniformly across the country. Indeed, available evidence suggests that the population of undocumented aliens is highly concentrated in a small number of states. This finding, the rapid growth in recent years of the number of undocumented resident aliens, and certain political beliefs have led many to argue that undocumented resident aliens enumerated by the census should be excluded from census counts at least for the purposes of congressional apportionment and perhaps even for the purposes of allocating certain other federal resources.

In the main text, I analyze the effect of synthetic adjustment of census counts on congressional apportionment. The census counts that I adjust include those undocumented aliens who were enumerated. In this appendix, I study the effect of synthetic adjustment when the estimated number of undocumented aliens enumerated is first subtracted from the census estimate of the total population for each state.

State-level estimates of undocumented resident aliens counted by the 1980 census have been prepared by the Census Bureau. In using these estimates, I assume that all undocumented aliens are nonblack Hispanics.

Setting aside for the moment the issue of adjustment, we can determine the effect on apportionment of subtracting counted undocumented aliens from the census estimates transmitted to the president. As shown in Table C1, apportionment would have been altered in 1980 by excluding undocumented resident aliens; both Georgia and Indiana would have gained one House seat, these coming at the expense of New York and California. The congressional delegations for other states would have been unchanged in size.

To determine the effect of adjusting census counts from which undocumented aliens have been excluded, we can consider, as in the main text, two alternative synthetic adjustments. In one, I adjust for differential black/nonblack undercount using national undercount estimates of 4.8 and -1.1 percent, respectively. The effect is shown in the middle of Table C1. Georgia, Indiana, and Alabama would have gained one seat each; New York would have lost one seat; and California would have lost two seats.

Table C1
The Effect of Synthetic Adjustment on Congressional Apportionment in 1980
when Undocumented Aliens Are Excluded from Census Counts

Groups Recognized for Purposes of Synthetic Adjustment	Adjustment Effect on Apportionment Number of Seats Gained (+) or Lost (-)
none (no adjustment)	NY -1, GA +1, CA -1, IN +1
blacks/nonblacks	NY -1, GA +1, CA -2, IN +1, AL +1
blacks,nonblack Hispanics/nonblack-nonHispanics	NY -1, GA +1, CA -1, AL +1

The other synthetic adjustment also recognizes two groups: one with blacks and nonblack Hispanics and the other consisting of persons who are neither black nor Hispanic. I assume that the national black and nonblack undercounts are 4.8 and -1.1 percent as before but that the national undercount for nonblack Hispanics is 4.8 percent. The effect of this adjustment would have been to shift one seat each from New York and California to Georgia and Alabama.

The adjustments just described were made after undocumented aliens were subtracted from census counts. This would seem to be the logical sequence. As I noted in the main text, however, opponents of synthetic adjustment have argued, probably correctly, that national undercount estimates produced by demographic analysis may contain large errors on account of undocumented resident aliens; more specifically, the estimates may substantially understate the true undercounts. If such were the case, subtracting undocumented aliens after adjustment, that is, subtracting them from adjusted instead of census counts might be seen as a reasonable way to compensate to some unknown degree for the errors in national undercount estimates. Following this procedure yields results identical to those in Table C1 based on subtractions prior to adjustment.

The findings reported in this appendix along with those discussed in the text reveal that adjustment potentially affects apportionment regardless of whether undocumented aliens are subtracted from census counts. Comparing the results indicates, however, that adjustment effects on apportionment may be larger, in the sense that more seats may be reallocated and more states may be involved in the reallocation, when undocumented aliens are excluded. Finally, my results show that the effects may be the same when undocumented aliens are subtracted after, instead of before, adjustment. Which procedure produces more accurate population estimates is, however, an unresolved question requiring further research.

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Testimony of
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Before the
United States House of Representatives
Committee on Post Office and Civil Service
Honorable William D. Ford, Chairman

Ypsilanti, Michigan

June 24, 1988

L. Rosen, June 24, 1988

Mr. Chairman, members of the committee, and guests, I am honored to be here today to represent the State of Michigan and to present information on the demographic trends which have affected Michigan over the past several years and which will continue to influence the citizens of Michigan and our endeavors during the next decade.

I. INTRODUCTION.

By way of introduction, I am employed as the senior State Demographer by the Office of Revenue and Tax Analysis in the Michigan Department of Management and Budget, a position I have held for the past twelve years. As the central location for demographic information and analysis within Michigan state government, the Office of Revenue and Tax Analysis is responsible for the annual production of official population estimates for Michigan and its counties through participation in the Federal-State Cooperative Program for Local Population Estimates, the periodic compilation of official population projections for Michigan and its counties, and the dissemination and interpretation of demographic and economic data produced by the Census Bureau through the Michigan Information Center program, Michigan's entry in the Census Bureau's State Data Center program. In my role as State Demographer I also serve as the official contact or liaison between the Census Bureau and the State of Michigan on programs and issues of mutual concern such as the production of the data base to be used for legislative 'redistricting following the 1990 census and training local government officials to review census figures for their communities when they become available in 1990.

LANSING, June 24, 1980

As requested, my comments will be mainly educational as I trace the demographic trends which characterized Michigan during the first seven years of this decade as well as the projected demographic trends which will influence Michigan for the remainder of this decade and into the 1990s. In addition, I will briefly characterize the implications these trends hold for Michigan in the years immediately following the next census.

II. POPULATION GROWTH IN MICHIGAN.

According to the 1980 Census of Population and Housing, the population of Michigan was 9,262,078 as of April 1, 1980. Michigan was suffering from the first of two back-to-back recessions at that time and Michigan's population dropped significantly during subsequent years as a result of this economic decline. Specifically, a substantially larger number of people migrated out of the state than moved into Michigan during the first several years of this decade. Estimates prepared by the Michigan Department of Management and Budget show a net loss through migration of 137,000 in 1980-81, a loss of 157,000 in 1981-82, a loss of 123,000 in 1982-83, and a loss of 53,000 in 1983-84. The net losses in each of these years far exceeded the average annual losses of 30,000 which were experienced during the years 1970 through 1979.

Since 1982, however, Michigan has experienced a significant revival in both its economic and demographic well being. Between 1982 and 1987, employment in Michigan grew from 3.6 million to 4.2 million, an increase of more than one-half million or 14.9 percent; unemployment simultaneously declined by almost 300,000--from more than 660,000 in

L.Rosen. June 24, 1988

1982 to less than 370,000 in 1987--a drop of 44 percent. As another indicator of economic recovery, housing starts blossomed from 14,100 in 1982 to more than 51,000 in 1987, almost a fourfold increase. And as a reflection of these changes, Michigan's population has increased from a low of 9,054,000 in 1983 to an estimated 9.2 million residents in 1987.

This increase of 1.6 percent is about half of the national rate of growth for the 1983-87 period, but it is approximately twice the growth for the five-state upper Great Lakes region. Between 1985 and 1986, Michigan posted the largest population gain of any of the Great Lakes States, and Michigan followed only New Jersey for most growth in the entire eastern-midwestern third of the nation. Michigan posted larger population growth than the other Great Lakes states during the period 1986 to 1987 as well.

This renewed growth is based on two demographic factors: first, Michigan continues to experience "natural" population increase--that is, births in excess of deaths each year; and, second, migration out of Michigan has dropped dramatically over the past six years. At the present time, despite near record low levels of fertility, we are experiencing seven births for every four deaths in Michigan each year; in 1985, for example, there were 138,000 births and 79,000 deaths, for a total natural increase of 59,000. Net migration from Michigan has declined steadily from 1982 when, as noted earlier, 157,000 more people left the state than moved into the state. The following years showed net outmigrations of 123,000, 53,000, 29,000 and, for 1985-86, a loss of only 3,300. Based on preliminary estimates, we believe Michigan

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experienced net immigration of about 3,000 for the period 1986-87--the first net immigration experienced in Michigan since 1969.

Michigan's reviving economic and demographic health has been reflected in growth trends in several of Michigan's metropolitan areas. Following declines in several of Michigan's manufacturing centers during the early 1980s, population growth has resumed for the Detroit Metropolitan Area and several of Michigan's other major centers. Generally speaking, metropolitan areas which have the most diverse economies such as Grand Rapids, Ann Arbor, and Kalamazoo, have lead the state in population growth during the past six years. Much of the growth in these and other metropolitan areas during the past several years has been in the suburban areas which surround the central cities. At the same time, continuing declines among inner city populations have slowed considerably in several cases.

Substantial population growth has also continued in several of Michigan's nonmetropolitan areas during the past several years. Michigan continues to experience a "rural revival" in two major areas: northern lower Michigan, particularly the counties around Grand Traverse Bay and those counties along the I-75 corridor from Mason County to the Mackinac Bridge; and in the southwestern lower Michigan counties of Allegan, Barry, St. Joseph, and Van Buren.

III. POPULATION COMPOSITION.

The most significant aspect of the changing demographic character of Michigan's population is that our population, like that of the nation itself, is growing older. This is most easily seen in terms of the

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median age of the population over time: in 1970, half of Michigan's population was less than 26 years of age. By 1975 the median had grown to 27 years of age, and it continued to rise to 28.8 years in 1980 and 30.3 years in 1985. While this reflects a national trend, Michigan remains a younger-than-average state as illustrated by the higher median ages generated for the entire nation at each point of time in our analysis.

Underlying this graying of the population are three distinct demographic trends. First, we have a larger, healthier, and longer-lived older population than at any time in our history. Those 65 and older in Michigan have grown from 8.4 percent of the population in 1970 to 9.8 percent in 1980 and an estimated 11.2 percent in 1985. Growth in the older population has been substantially faster than growth within the population at large both here in Michigan and across the nation. In addition to a larger number of people reaching age 65 each year through the early 1990s, life expectancy among older people has reached historically high levels. People reaching age 65 can expect to live an average of almost 17 more years; those reaching age 75 have an average life expectancy of 10.8 years; and those surviving to age 85 have a life expectancy of an additional 6 six years.

The second factor contributing to the aging of our population is the substantial decline in the youth population over the past two decades since the end of the baby boom. Michigan's baby boom peaked in 1957 at 208,000 and then steadily dropped until reaching a low point in 1976 at 131,000 births--the "baby bust." While births have since grown to close to the 140,000 annual level, these births each year only partly

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replace the baby boomers who have been growing older and have been moving out of the youth category during the last two decades. Between 1970 and 1980 the number of children in Michigan below age 14 declined by one-half million, with an additional decline of approximately 200,000 since 1980.

The third factor in the aging of Michigan's population is simply due to the "baby boomers" getting older. The baby boom generation is the largest generation ever born in Michigan. Having moved through childhood and adolescence in the 1950s, 1960s, and 1970s, baby boomers are now approaching middle age, and they are raising the average age of all Michigan residents as this large and influential group of people grow older year by year. Moreover, as this largest of all generations continues to get older, the average age of the population in Michigan will continue to get older.

IV. FUTURE TRENDS.

The most recent set of population projections prepared by the Michigan Department of Management and Budget see many of the patterns described above continuing through the end of this century.

Michigan's total population is projected to grow modestly but steadily through the end of this century. Revised figures indicate that Michigan's population will reach 9,330,000 by 1990, with growth to about 9.4 million in 1995 and possibly as high as 9.8 million residents by 2000.

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Population growth will not, however, be uniform throughout the state. The metropolitan areas of southern lower Michigan, where 80 percent of our population resides, will see an increase of almost 180,000 residents, but because of the large population base, this produces growth of only 2.5 percent by the year 1990. Most of this growth will occur in the suburban and exurban portions of the metropolitan areas. Generally speaking, minimal growth is expected in those metropolitan areas--such as Jackson, Flint, and Saginaw--which are most closely tied to the automobile industry. Growth leaders will continue to be places such as Grand Rapids and Ann Arbor and, to a lesser degree, Kalamazoo and Lansing. Growth in the more rural areas of southern lower Michigan will be at a higher 3.2 percent rate, an increase of over 50,000 residents by 1990.

A resurgence of population growth in northern lower Michigan is also anticipated through 1990 and beyond. While still only lightly populated when compared to the southern half of lower Michigan, the half-million residents of the area north of a line from Bay City to Muskegon are projected to grow by more than 60,000 by 1990, an increase of almost 12 percent. Moreover, although this region includes only 5.6 percent of Michigan's population, more than 20 percent of anticipated growth is slated to occur in this area. As in the past, this growth will be concentrated in the Traverse Bay area of northwestern lower Michigan and along the I-75 corridor in the Houghton Lake area north to the Mackinac Bridge.

A small increase for the Upper Peninsula is also anticipated. Following fifty years of steady population decline, the Upper Peninsula

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exhibited a small turnaround between 1970 and 1980, and this is expected to continue through 1990 with approximately 9,000 additional residents.

Through 1990 and beyond Michigan's population will continue to grow older. The median age will rise from 30.3 in 1985 to 31.6 in 1990 and 34.2 in 2000. However, the growth of Michigan's older population will slow down after 1990 as the smaller birth cohorts of the 1930s begin reaching age sixty-five. At the other end of the scale, the decline in the number of children below age 14 has bottomed out, and the next five to ten years will see little if any growth in this age category in Michigan. Young people, ages 15 to 24, will continue to drop in number through 1990--losses are estimated up to 300,000 between 1980 and 1990. And, as discussed earlier, the baby boomers will be firmly entrenched in the family-formation and career establishing ages of 25 to 44, increasing the size of this category by one-half million by 1990.

V. IMPLICATIONS

Despite forecasts of renewed growth through the end of this decade and into the 1990s, growth in Michigan and other states in the Great Lakes region will lag behind growth elsewhere in the nation, mainly in the South and the West. As a result, Michigan could lose at least one and possibly two seats in Congress after apportionment based on the 1990 Census of Population and Housing is conducted. While it is impossible to determine precisely where the remaining Congressional district lines as well as state legislative district lines will be drawn after 1990, continued suburban growth throughout southern lower Michigan as well as

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rural growth in northern lower Michigan could be reflected in some increased representation in Washington and Lansing for these areas.

As the baby boom generation approaches its most productive and peak earnings years, personal income in Michigan is likely to grow during the next five to ten years. Moreover, with little increase in the number of children and only moderate expansion of the older population, growth in the demand for public services should ease back slightly, thus relieving some of the pressure on state and local government agencies and, ultimately, the taxpayer. There are other fiscal implications of these growth trends. For example, despite the demise of the Federal Revenue Sharing program, billions of dollars are still provided to state and local government agencies through formulas which take population figures into account. As Michigan's share of total U.S. population has declined over recent years, it's share of this largess has similarly declined.

The patterns of population growth forecasted for the next several years will have some impact on Michigan's public schools. This impact can best be described as "imbalance." That is, we are likely to see--indeed we are already seeing--growing enrollments in several suburban and rural fringe areas which are unprepared for these increases while many closer-in locations with larger and older facilities are faced with stagnant or declining enrollments. In addition, where growth or decline is not a problem, imbalances within the schools are still going to be evident as the young children of the baby boom generation will be reaching school age during the late 1980s and early 1990s, thus putting additional pressure on teachers and class size in the lower grades.

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Simultaneously, the baby bust of the mid 1970s will be reflected in lower secondary school enrollments during the late 1980s and early 1990s.

The aging of Michigan's population and the modest pace of population growth in the Great Lake State will ease the absorption of new entrants into Michigan's labor force. During the baby boom years, Michigan and other states experienced high rates of teenage unemployment as the number of young people consistently outstripped creation of new jobs, particularly entry level jobs requiring little education and few skills. During the next five to ten years, the slow pace of growth among those aged 15 to 24 will likely lead to a better fit between teenagers and entry level employment opportunities, thus reducing teenage unemployment. It is also possible that spot labor shortages will appear, particularly for entry level and lower wage service sector jobs in suburban areas. Conversely, this situation will provide increased work opportunities for some older and semi-retired workers who may wish to supplement their incomes through part-time and service sector employment.

As mentioned earlier, the next decade will see increasing numbers of Michigan's baby boom generation moving into their peak earnings years. This may provide some additional stimulation to Michigan's economy, particularly with regard to the purchase of higher priced durable goods, entertainment, and recreational activities.

Finally, despite projected increases in Michigan's older population, relatively slow population growth overall will add to the growing

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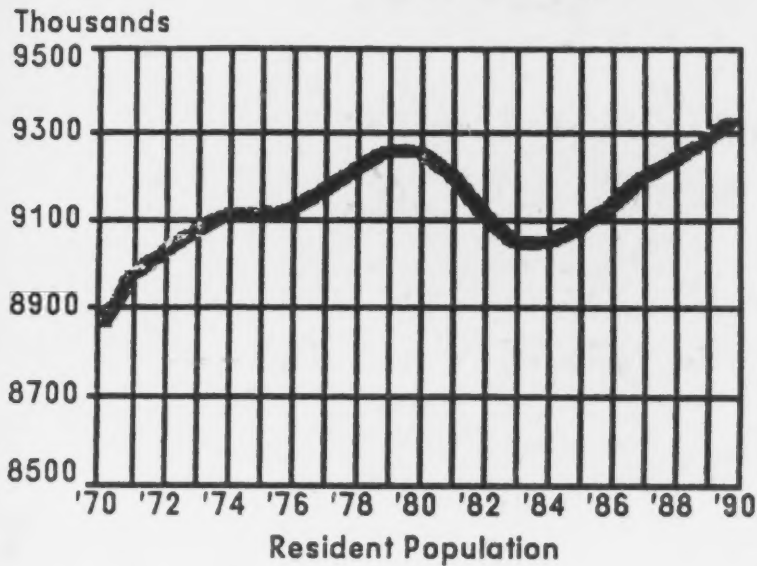
financial pressure on Michigan hospitals and health care providers, and it is likely that competition within Michigan's health care industry will increase. Moreover, as with the schools, the imbalance between the inner-city health care infrastructure with greater inner-city concentrations of the medically indigent and the less extensively served but growing suburban and rural populations will make the delivery of health care services more difficult and more expensive over the next decade.

VI. CONCLUSIONS

Demographic changes in Michigan through the end of this decade and into the 1990s will be significant, and these changes will have dramatic impacts on both the composition of our population as well as the distribution of Michigan's residents throughout our eighty-three counties. It is imperative that these changes be carefully monitored and that their implications be more fully understood so that changes in the needs of our population may be served better, that opportunities for business and industry in Michigan may be expanded, and that the quality of life for all of Michigan's citizens be enhanced.

MICHIGAN'S POPULATION

1970 to 1990



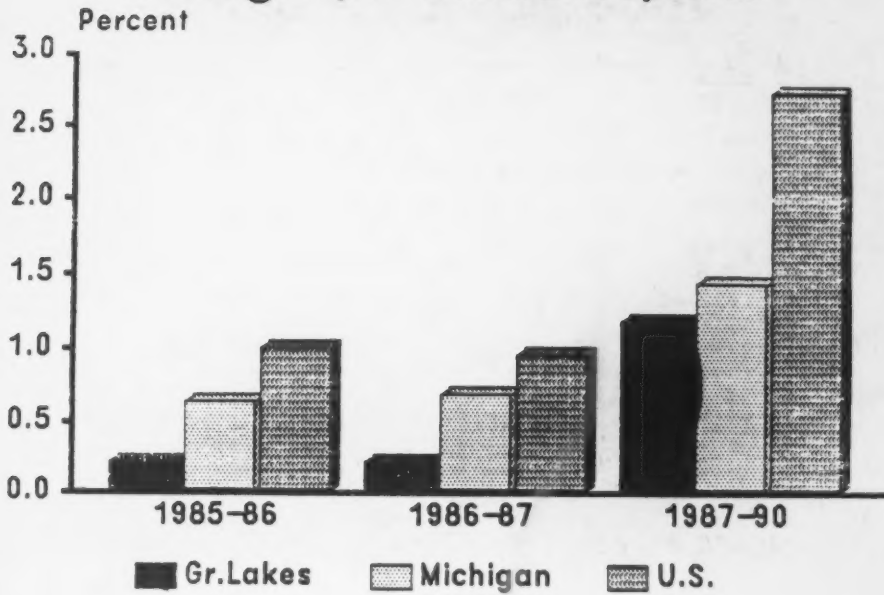
MICHIGAN'S RECOVERY

1982 to 1987

- POPULATION + 146,000
- EMPLOYMENT + 538,000
- UNEMPLOYMENT - 292,000
- HOUSING STARTS + 37,200

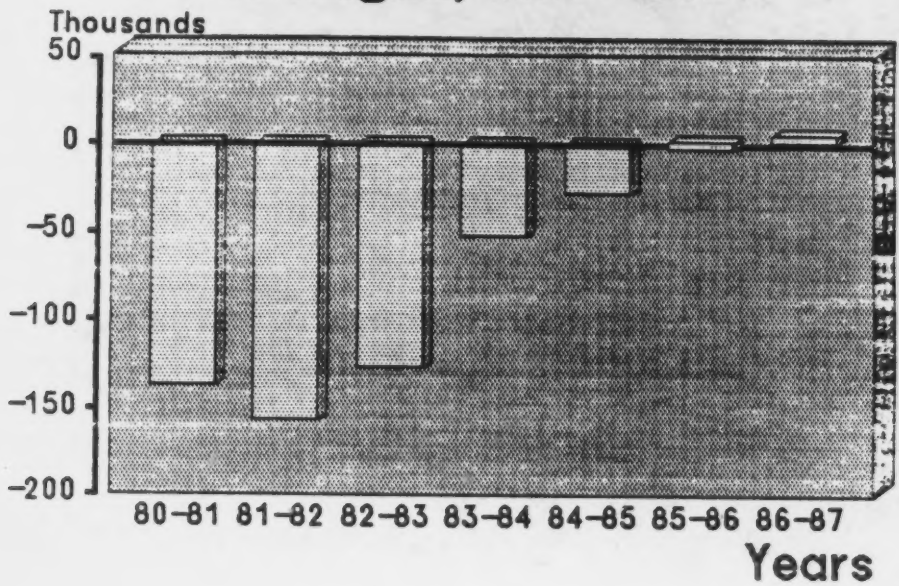
POPULATION CHANGE, 1985-1990

Michigan, Great Lakes, U.S.



NET MIGRATION

Michigan, 1980-1987



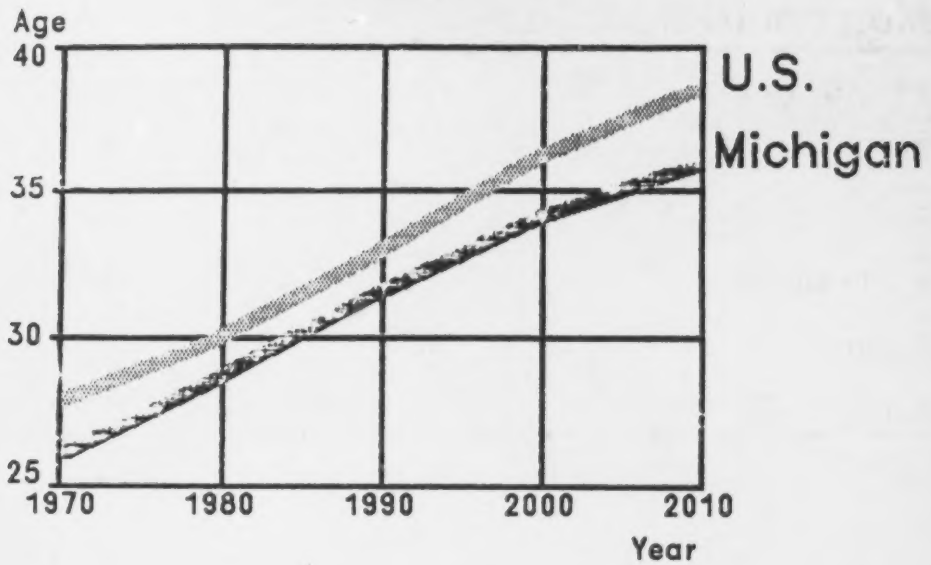
SELECTED METRO AREAS

Change (1000's) 1984-86

Metropolitan Area	1984	1986
Ann Arbor	260.5	266.0
Detroit	4317.9	4410.7
Flint	434.1	434.9
Grand Rapids	623.2	648.8
Kalamazoo	213.5	217.7
Saginaw-Bay City-Midland	411.9	403.6

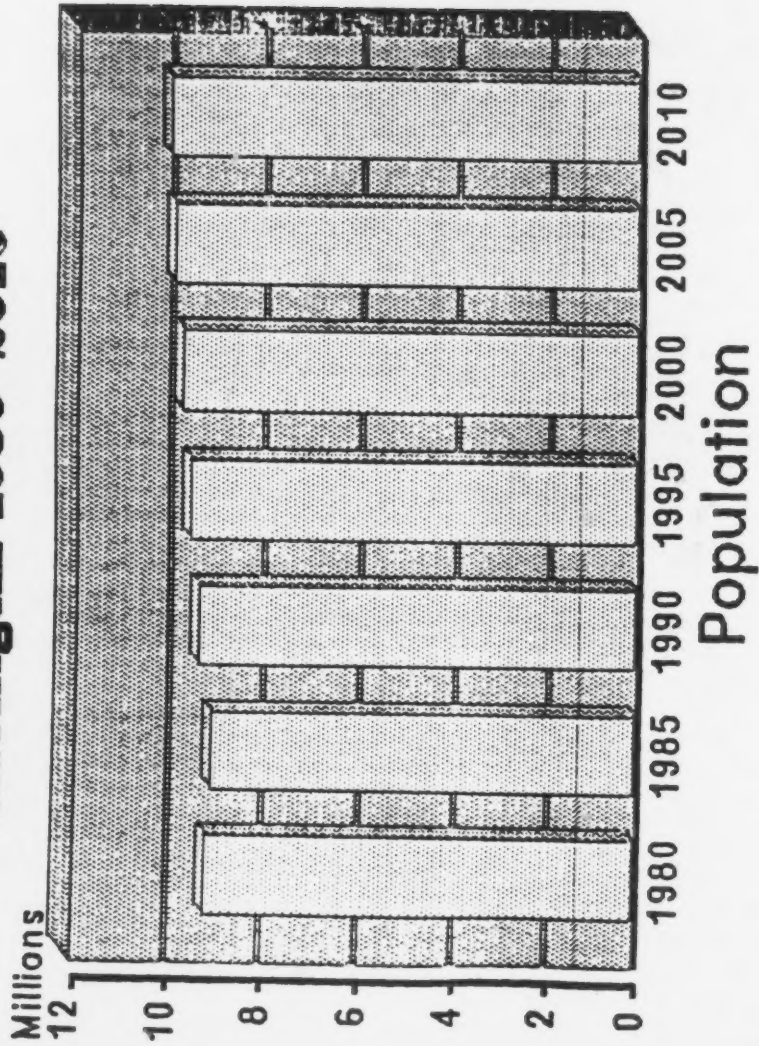
MEDIAN AGE

1970-2010

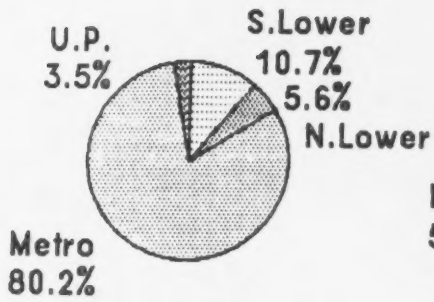


GROWTH FORECAST

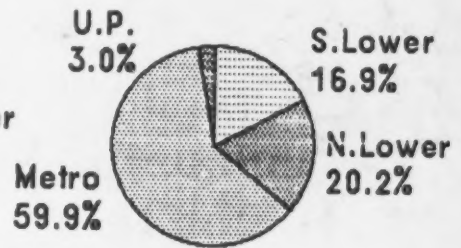
Michigan 1980-2010



REGIONAL LOCATION AND CHANGE IN MICHIGAN

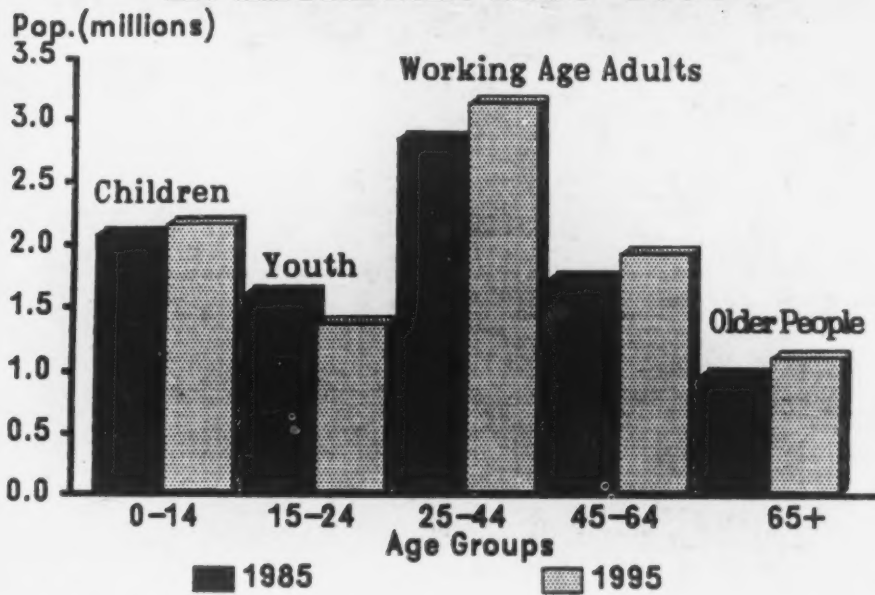


Location 1985



Growth 1985-90

CHANGING AGE GROUPS IN MICHIGAN 1985-1995



IMPLICATIONS

- Reapportionment & Redistricting
- Federal Programs & Funds
- Education
- Employment and Earnings
- Health Care

Testimony of

Vincent P. Barabba

before the

House of Representatives

Committee on Post Office and Civil Service

on

The 1990 Census

Washington, D.C.

June 24, 1988

My name is Vincent P. Barabba. I served as Director of the Bureau of Census, U.S. Department of Commerce from 1973 to 1976 and again from 1979 to 1981.

I would like to present my testimony in two parts:

1. The impracticality of implementing the request to either identify or eliminate undocumented immigrants from the 1990 Census, and,
2. The attempt, by some, to use the Census process to accomplish, through data collection and statistical procedure, political actions which are more appropriately handled through new legislation or enforcement of existing legislations.

First, the practicality of identifying or eliminating undocumented immigrants from the 1990 Census. I am generally very comfortable with having the battle between society's vested interest groups joined in meaningful congressional debate which eventually results (hopefully) in laws which provide sufficient direction to government and private institutions which allow them to carry out the original intent of the law. I find it very frustrating, however, when these interest groups bring their arguments forward so late that it makes it virtually impossible for a government agency to implement the proposed changes either efficiently or effectively, or in some cases, -- at all!

As Census Director Jack Keane has made clear to the Congress, it would be impossible for the bureau to offer even a glimmer of hope that they could -- at this late stage of the Census process -- develop, test and implement the procedures required to either identify or exclude undocumented immigrants from the Census process without putting at risk the quality of the entire 1990 Census program.

I can confirm his testimony based on my direct experience with the 1980 Census and intensive review of the 1970 Census. It seems to me that if the proponents of these types of change want to see them implemented in a meaningful way, they should start at the beginning of the decade -- working with the Congress on establishing agreement on the substance of their desired changes and allow the Census Bureau sufficient time to design, develop and test procedures for the implementation of the proposed changes.

It should also be pointed out that there is no guarantee that the Bureau can develop an acceptable procedure that is capable of extracting from the inhabitants of the United States that which they either are not capable of providing or choose not to voluntarily divulge.

It is my judgment that the attempt to identify undocumented immigrants -- so they may be either excluded from the count or tabulated for exclusion or inclusion in programs that can effect them in negative ways -- would be impossible to implement.

And that leads to the second portion of my testimony -- using the Census to accomplish actions which would be better handled through the legislative process. It is abundantly clear that the U.S. Census is a reflection of the political process which, in essence, created it. Indeed, other testimony presented to the panel has eloquently and clearly provided the history of the Census beginnings and its subsequent adjustments and modifications to meet the changes that have occurred in our society.

But, the Bureau can only operate as a reflection of society's will -- not an institution, like the Congress, which attempts to direct society.

Without taking a position on the merit of the claims of those who wish to exclude undocumented immigrants, it seems to me they are being extremely unfair in criticizing the Census Bureau for what appears to be them as being unresponsive to their requests.

What must be understood by all concerned is that the census is much more than any of the desires of specific interest groups. Because of this broad responsibility, it is incumbent on all of us to be sensitive with a subject as complex and ambiguous as to what is a definition of a person's legal status. In every instance, the Census Bureau must take into consideration not only the impact that any of its questions has on those who may consider themselves a target of the inquiry, but also those who may be indirectly or even perceive themselves as impacted by the question.

If we lived in a more controlled society where government kept dossiers on its citizens, the ability of government to either encourage or discourage undocumented immigrants to enter our borders would be greatly enhanced -- but at a price not all of us would be willing to pay. And though such an environment would also make it easier for the Census Bureau, I'm sure society is not willing to pay that price either. And frankly, based on my 20 years of experience with the Census Bureau, neither would they.

As an example, though given the power by Congress to mandate a response from every inhabitant, the Bureau has found that in a society like ours, it has to develop a balance between society's need to know and the individual's right to privacy and attitude toward government. The Bureau takes this position because it realizes that public cooperation is the cornerstone of a successful census. Maintaining this balance is by every measure is a very delicate balancing act, with significant consequences. For example, if because of an intrusive procedure, we fail to count a tenth of a percent of our population, that is equivalent to losing the population of cities the size of Rochester, New York; Corpus Christi, Texas; and Anaheim, California.

Let me conclude this testimony by pointing out that the request to identify undocumented immigrants, based on the practicality of its implementation, is, in my assessment, a no-win situation.

First, most evidence indicates that the Census Bureau -- through no fault of its own -- cannot count or classify undocumented immigrants with sufficient accuracy to provide counts which will allow society to deal with this already difficult and confusing issue.

Second, any attempt to do so could impact negatively the Census Bureau's ability to enumerate documented immigrants and inhabitants with less than clear documentation status.

It is my judgment that you should not ask the Census Bureau to make its assignment even more difficult -- given what appears to be a very limited chance of successfully enumerating undocumented immigrants.



June 21, 1988

Contact: Dave Simcox (202) 328-7228

IMPACT OF IMMIGRATION ON CONGRESSIONAL REPRESENTATION

EXECUTIVE SUMMARY

Explanations of shifts in Congressional representation among states have often overlooked the effects of international migration on the size, and particularly the distribution of the U.S. population. Some 70 percent of all immigrants have consistently tended to settle in six states: California, New York, Texas, Florida, New Jersey and Illinois.

Estimates of the distribution of immigrants in the 1950-1980 period show that the top six states of immigrant settlement had sixteen more seats in 1980 than they could have had in the absence of immigration. California alone gained six seats through immigration in that period, 40 percent of its total increase in representation. Two of Florida's eleven added seats were due to foreign newcomers and their children.

The shift of seats to immigration-heavy states is likely to accelerate in the next three decades as immigration remains high and the country's natural increase continues to slow. Using Census Bureau population projections and applying existing distribution ratios for immigrants and their children, it is estimated that with net immigration of 450,000 yearly the six major immigrant receiving states will have increased their share of Congressional seats from its current 161 to 179, with seven of the eighteen added seats attributable to immigration. If a more realistic net immigration level of 750,000 yearly is posited, the six receiving states will increase their share over the next three decades to 184, twelve seats more than they would have had without immigration.

California would be the major gainer under either projection, gaining four of its additional thirteen seats in 2010 from assumed annual immigration of 450,000, or seven of fifteen additional seats attributable to foreign newcomers if immigration continues at 750,000 a year.

Introduction: Population and Representation -- The Constitution of the United States (Article I, Section 2, and the Fourteenth Amendment) provides that: (a) all persons in the nation shall be counted every ten years; and (b) based on those census results, the House of Representatives shall be reapportioned every ten years. Reapportionment follows the decennial census. After census data are tabulated and approved by the Secretary of Commerce, a mathematical formula is applied that determines whether states lose, gain or remain unchanged in their representation in the House of Representatives. Since the 1910 census the number of House seats has been frozen at 435.

Not surprisingly in our highly mobile society, a number of shifts in Congressional seats occurs every decade. For example, the 1980 census caused New York state to lose five seats while Florida gained four.

Shifts of Population Among States -- The population of a state can change only because of shifts in natural increase (i.e. births - deaths) or net migration (i.e. in-migration, out-migration). Except for a few states like Alaska, New Mexico and Utah, fertility varies little among the states. Variations in mortality among states are also slight. So the key factor in population change among states is net migration. New York and Florida had similar fertility rates, although mortality was higher in Florida because of its older population. However, New York experienced substantial net out-migration while Florida received many new residents. New York's population fell from 18.2 to 17.5 million between 1970 and 1980, while Florida's increased from 6.8 to 9.7 million.

Explanations of loss or gain in Congressional representation have generally disregarded international migration (as opposed to domestic migration) as a factor. The usual explanation of New York's loss and Florida's gain is that many New Yorkers are moving to the "Sun Belt." While this is true, net immigration also contributes significantly.

With fertility -- now 1.8 live births per woman -- at historical lows and with immigration approaching historical highs, immigration's contribution to national growth is increasing and will continue to do so. In the 1980s, legal immigration will account for at least one-third of the nation's growth. If illegal immigration is considered, that share will probably surpass 40 percent. If fertility remains low, it is quite likely that soon after the turn of the century, immigration will account for all of the nation's population growth.

All population changes come from variations in natural increase and net migration. But both these factors have an immigration dimension. Some portion of the migration in or out of any state is international. Similarly, some of the births and

the deaths in a state occur to immigrants. The full impact of immigration on population is not limited to the number who enter a region; it also includes the births and deaths that occur to these new residents.

Immigrants to the United States do not distribute themselves evenly across the nation. In fact, some 70 percent of all legal immigrants tend to settle in six states: California, New York, Texas, Florida, New Jersey and Illinois. An even larger proportion of illegal immigrants live in these same six states. Immigration affects the size and distribution of the population which, of course, affects Congressional reapportionment.

Past Effects of Immigration: Greater Representation--
Understanding future changes in population distribution requires first a look back to the period of 1950 to 1980. Over those 30 years, almost 10.5 million people immigrated legally to the United States. Over the same three decades, the nation's population grew from 151.1 to 226.5 million. How much of that increase of 75.4 million was attributable, directly and indirectly, to immigration?

To arrive at an estimate of the impact of immigration the 1950 United States population was projected by age and sex to 1980 assuming no immigration. The total fertility rates (TFR) and the survival rates used for each five-year period replicated, as nearly as possible, the actual situation. However, immigration was not included. The results are in Table 1 (attached). Immigration over that thirty year period accounted for about 21.6 million (or 29 percent) of the nation's overall population increase, about half of which was actual net legal and illegal immigration and half natural increase among immigrants.

The contribution of immigration to the population of the U.S. can be estimated for the 1950-1980 period, particularly the six states most likely to be preferred areas of immigrant settlement. About 70 percent of all immigrants tend to live in just six states, a proportion that has remained relatively constant for many years. Furthermore, the share in each of the six states varied little within that thirty year period. Thus, the 21.6 million immigrants and their children who accounted for a portion of the nation's growth between 1950 and 1980 were distributed among the states in a similar manner. The following assumptions can be made:

- 25 percent were in California,
- 19 percent in New York,
- 8 percent in Florida,
- 6 percent each in New Jersey, Texas and Illinois,

-- the remaining 30 percent were in the remaining forty-four states and the District of Columbia.

The resulting numbers are then subtracted from the actual state totals for 1980 to give us an estimate of what the populations of these states would be in 1980 if there had been zero immigration since 1950. (See Table 2). As expected, their respective shares of the total population declined. For example, California's share fell from 10.4 percent to 8.9; New York's fell from 7.8 to 6.6 percent.

Such shifts in proportion do not necessarily translate fully into comparable shifts in Congressional seats. The allocation formula based on the "zero immigration" population for 1980 was recalculated to determine what would have been the states' respective shares of House of Representative seats if there had been no immigration since 1950. This is summarized in Table 3.

Because of immigration in this period states lost or gained power in Congress in several ways:

- o by absolute increases beyond what normal domestic growth would have yielded, (California);
- o by retention of seats that would have been lost under normal domestic demographic trends (New York);
- o by the loss of prospective seats which above average population growth would have otherwise produced in the absence of high immigration settlement elsewhere (Georgia).

Among the winners, losers and hypothetical losers as a result of immigration in 1950-1980 were:

- o California, which gained six of its fifteen-seat increase, or 40 percent, through new foreign residents and their offsprings.
- o Florida, which owes two of its eleven-seat increase to immigrants.
- o New York, which lost nine seats, but retained six it would have lost had there been no immigration.
- o Michigan, which kept up with the rate of natural increase and added 2.9 million people in the three decades, but showed no gain in seats for the period.
- o Georgia, which in the 1950-1980 period grew nearly 17 percent faster than the national average and increased its population by two million, but gained only one seat.

- o The forty-four states of low-immigrant settlement that among them shared sixteen fewer seats than they would have in the absence of immigration.

This method of determining the contribution of immigration, direct and indirect, is approximate at best. But even if the effect of immigration was cut by half, it would still mean a politically significant shift of eight seats between states of immigration density and those of immigration sparsity. With the demographic shifts now occurring in both fertility and immigration, immigration's impact on representation must be expected to remain significant in future years.

Looking Ahead: The Period 1980-2010 -- Tracing the future is considerably more risky and confronts us with unknowns. Will fertility remain at its present all-time low? Will the levels of immigration keep climbing? Will the 1986 legislation succeed in reducing illegal entries? Will the emigration rate of U.S. residents change? Will Congress change legal immigration rules, and how?

Estimates of the allocation of Congressional seats for 1980-2010 rely on Census Bureau projections. In 1984 the bureau prepared a series of alternative population projections for the period 1983-2080. Later, state level projections were developed based on the national projection's medium estimate.

The Census Bureau's medium projection assumed that: the total fertility rate would rise slightly to 1.9; life expectancy would eventually reach 81 years; and net immigration would remain constant at 450,000 per year. There was no assumption of a higher fertility rate for non-black minorities, or for future immigrants. And the bureau's net immigration assumption does not account for the untold thousands of illegal entries every year. Finally, when the Census Bureau made its projections there was no way of foreseeing the 1987-1988 amnesty. While the figures cannot adjust for the low fertility assumption for immigrants and minorities, the figures will adjust for the omission of the persons who were legalized during the year ending May 4.

According to a May, 1988 INS report, of the over 1.6 million applicants for legalization under the general amnesty, 54 percent lived in California and another 19 percent lived in Texas. An unknown number of these 1.6 million were probably enumerated in the 1980 census. Most likely 1 million were not counted. That total is then increased over the 1990-2010 period by 20 percent to account for natural increase. These 1.2 million persons are then distributed among the states. This gives a revised projection of the 2010 population assuming annual net immigration of 450,000. (See Table 4).

One set of the Census Bureau's series of projections, which assumes no immigration whatsoever, projects that by 2010 the nation's population would be 267 million, or 16.9 million less than estimated by our revised version of the assumption of net immigration of 450,000. So even under the census' conservative projections of immigration between 1980 and 2010, 16.9 million of the 57 million increase in population would come from immigrants or their children.

These 16.9 million additional people are then distributed by their intended state of residence according to the most recent data from INS. Immigrants' preferences for states of settlement in the 1970s have persisted in subsequent years. That is, about 28 percent plan to live in California, 18 percent in New York and so on. The projected distribution of the immigrant population by major settlement states appears in Table 5.

The next step is to determine the allocation of seats under both sets of assumptions: one with 450,000 net immigration annually; the other with zero immigration after 1980. Table 6 shows that immigration again weighs heavily in reapportionment.

Even with the assumption of zero immigration after 1980, California's seats in Congress will increase from forty-five to fifty-four. However, with net immigration of 450,000 per year, that number would rise to fifty-eight, giving California four more seats and New York three more than they would have had without immigration. Other shifts of seats would be minimal. The top six immigrant receiving states would have missed out on the prospective gain of seven seats if immigration had ended in 1980. Those seats would have been distributed among the remaining forty-four states.

The Census Bureau's assumption of net immigration of 450,000 is quite conservative. Legal immigration has grown considerably to over 600,000 per year in 1986 and 1987, and when legalizations are included could easily reach 8 million for the decade of the 1980s. Illegal entries have remained high, though there are some early indicators of decline since the passage of the 1986 Immigration Reform and Control Act. Fertility of some new immigrant groups tends to be higher than that of resident Americans. Given these trends, the higher immigration scenario prepared by the Census Bureau seems more realistic. Here census assumes annual net migration of 750,000 per year, but builds in the same low fertility assumption as in its medium range projection.

Since the Census Bureau's state level projections are based on their medium projection, adjustments must be made to use it for estimating state populations under this higher scenario. The difference is prorated between the two projections in the total population of the country among the states according to

their past shares of the immigrant population. Table 7 summarizes the results.

Table 8 shows a substantial shift in Congressional representation. A comparison of the share of seats held by the six major immigrant-receiving states to those held by all other states highlights the transforming effect of high immigration on the distribution of political power.

- o With zero immigration after 1980, the number of seats held by the six leading receiving states, now 161, would rise to 172 in 2010.
- o With immigration limited to 450,000 per year, that number would rise to 179.
- o With immigration of 750,000 per year, the six states would control 184 seats or 42 percent of the seats in the House of Representatives by 2010. (See Table 9 for various scenarios for all fifty states.)
- o California, with immigration of 750,000 per year, will control 14.0 percent of the House of Representatives with 61 seats. Thirteen of these seats, or more than 40 percent of the increase, will have been gained through immigration based population increases since 1950.

In the current Congress the six immigrant receiving states have 161 seats, 37 percent of the total.

Conclusion -- This approximation of future population for the nation and selected states confirms that immigration is an increasingly important factor in determining the distribution of House seats. It will become even more important as natural increase declines rapidly because of low fertility.

But caution is needed: The zero immigration scenario cannot be assumed to reflect real world behavior. Recent research has shown that domestic migration among states is itself influenced by the volume of immigrant settlement in certain states. It follows that if immigration were in fact reduced, domestic movements might increase to such states as California which have long been attractive to both domestic and foreign migrants.

TABLE 1
US POPULATION WITH AND WITHOUT IMMIGRATION: 1950-1980
(in millions)

<u>Year</u>	<u>Estimated Population Without Immigration</u>	<u>TFR</u>	<u>Actual Population</u>	<u>TFR</u>
1950	151.1	3.1	151.1	3.1
1955	164.0	3.6	164.6	3.5
1960	176.3	3.5	179.4	3.6
1965	186.5	3.0	193.2	2.9
1970	194.1	2.4	203.8	2.4
1975	200.1	2.0	214.9	1.8
1980	204.9	1.7	226.5	1.8

TABLE 2
ESTIMATED 1980 POPULATION OF SELECTED STATES,
WITH AND WITHOUT IMMIGRATION BETWEEN 1950-1980
(in millions)

<u>State</u>	<u>Actual Pop.</u>	<u>%</u>	<u>Estimated Pop.</u>	<u>%</u>
California	23,669	10.4	18,300	8.9
Florida	9,740	4.3	8,000	3.9
Illinois	11,418	5.0	10,100	4.9
New Jersey	7,364	3.3	6,100	3.0
New York	17,557	7.8	13,500	6.6
Texas	14,228	6.3	12,900	6.3
Balance	142,529	62.9	136,000	66.4

TABLE 3
CONGRESSIONAL APPORTIONMENT BY LEVEL OF IMMIGRATION,
1950 AND 1980, SELECTED STATES

	Actual 1950	Actual 1980	Without Immigration 1950-1980 1980
California	30	45	39
Florida	8	19	17
Illinois	25	22	21
New Jersey	14	14	13
New York	43	34	28
Texas	22	27	27
Balance of Nation	293	274	290
Total	435	435	435

TABLE 4
PROJECTED U.S. POPULATION BY ALTERNATIVE
IMMIGRATION LEVELS, 1980-2010
(in thousands)

Year	Imm = 450,000 (Adjusted)*	No Immigration Since 1980	Difference
1980	227,500	227,500	-----
1990	250,657	245,764	4,893
2000	269,055	258,412	10,643
2010	284,438	267,468	16,970

*This includes an adjustment for the 1.6 million individuals "amnestied" in 1987-88.

TABLE 5

PROJECTED POPULATION OF SELECTED STATES
BY ALTERNATIVE IMMIGRATION LEVELS, 2010
(in thousands)

<u>State</u>	<u>Imm = 450,000 (Adjusted)*</u>	<u>Zero Immigration Since 1950</u>	<u>Difference</u>
California	37,947	33,195	4,752
Florida	17,536	16,518	1,018
Illinois	11,579	10,731	848
New Jersey	9,024	8,176	848
New York	18,172	15,177	3,055
Texas	22,497	21,159	1,338
Balance of Nation	167,683	162,532	5,091
Total	284,438	267,468	16,970

*This includes an adjustment for the 1.6 million individuals
"amnestied" in 1987-88.

TABLE 6

CONGRESSIONAL APPORTIONMENT BY LEVEL OF IMMIGRATION,
SELECTED STATES, 2010

<u>State</u>	<u>Immigration (450,000/year)</u>	<u>Zero Immigration</u>
California	58	54
Florida	27	27
Illinois	18	19
New Jersey	14	13
New York	28	25
Texas	34	34
Balance of Nation	256	263
Total	435	435

TABLE 7

PROJECTED U.S. AND SELECTED STATES POPULATION
WITH ANNUAL IMMIGRATION OF 750,000
2010
(in thousands)

<u>States</u>	<u>Number</u>
California	41,081
Florida	18,186
Illinois	12,121
New Jersey	9,566
New York	20,122
Texas	23,364
Balance of Nation	170,834
Total U.S.	295,274

TABLE 8

CONGRESSIONAL APPOINTMENT OF SELECTED STATES
WITH ANNUAL IMMIGRATION OF 750,000
2010

<u>States</u>	<u>Immigration (750,000/year)</u>	<u>Zero Immigration</u>
California	51	54
Florida	27	27
Illinois	18	19
New Jersey	14	13
New York	30	25
Texas	34	34
Balance of Nation	251	263
Total	435	435

TABLE 9

NUMBER OF CONGRESSIONAL SEATS BY
DIFFERENTIATING IMMIGRATION SCENARIOS

State	1980 Census	1980 0 IMG.	2010 Census	2010 0 IMG.	2010 450,000	2010 750,000
ALASKA	1	1	1	1	1	1
ALABAMA	7	8	7	7	7	7
ARKANSAS	4	5	4	4	4	4
ARIZONA	5	6	8	8	8	8
CALIFORNIA	45	39	58	54	58	61
COLORADO	6	6	6	7	6	6
CONNECTICUT	6	6	5	6	5	5
DELAWARE	1	1	1	1	1	1
FLORIDA	19	17	27	27	27	27
GEORGIA	10	11	14	14	14	14
HAWAII	2	2	2	3	2	2
IOWA	6	6	4	4	4	4
IDAHO	2	2	2	2	2	2
ILLINOIS	22	21	18	17	18	18
INDIANA	10	11	8	9	8	8
KANSAS	5	5	4	4	4	4
KENTUCKY	7	7	6	6	6	6
LOUISIANA	8	9	7	7	7	7
MASSACHUSETTS	11	12	10	10	10	10
MARYLAND	8	9	9	9	9	9
MAINE	2	2	2	2	2	2
MICHIGAN	18	19	14	14	14	14
MINNESOTA	8	8	7	7	7	7
MISSOURI	9	10	9	9	9	8
MISSISSIPPI	5	5	5	5	5	5
MONTANA	2	2	1	1	1	1
NORTH CAROLINA	11	12	13	13	13	12
NORTH DAKOTA	1	1	1	1	1	1
NEBRASKA	3	3	2	2	2	2
NEW HAMPSHIRE	2	2	2	2	2	2
NEW JERSEY	14	13	14	13	14	14
NEW MEXICO	3	3	4	4	4	3
NEVADA	2	2	2	2	2	2
NEW YORK	34	29	28	25	28	30
OHIO	21	22	16	17	16	16
OKLAHOMA	6	6	5	6	5	5
OREGON	5	5	5	5	5	5
PENNSYLVANIA	23	24	17	18	17	17
RHODE ISLAND	2	2	2	2	2	2
SOUTH CAROLINA	6	6	7	7	7	6
SOUTH DAKOTA	1	1	1	1	1	1
TENNESSEE	9	9	9	9	9	8
TEXAS	27	27	34	34	34	34

UTAH	3	3	3	3	3	3
VIRGINIA	10	11	11	12	11	11
VERMONT	1	1	1	1	1	1
WASHINGTON	8	8	8	8	8	8
WISCONSIN	9	10	7	8	7	7
WEST VIRGINIA	4	4	3	3	3	3
WYOMING	1	1	1	1	1	1
TOTAL	435	435	435	435	435	435

Note: Totals include one preassigned seat; excludes D.C.

OVERVIEW OF CURRENT CENSUS ISSUES

(By Daniel L. Pollitt, Kenan Professor of Law, The University of North Carolina at Chapel Hill)

For some years now the Committee on Post Office and Civil Service and its Subcommittee on Census and Population (chaired by Representative Mervyn Dymally) have been monitoring the preparations for the 1990 census. The most recent full committee hearing was on June 24, 1988, in Ypsilanti, Michigan. Representative William D. Ford chaired; Representatives Dymally, Frank McCloskey, and Carl D. Pursell shared the dias.

Dr. John G. Keane, Director, Bureau of the Census was the leadoff witness. He was followed by Thomas Durbin and David Huckabee from the Congressional Research Service, Library of Congress. These three know just about everything there is to know about the census from 1790 to the present.

Two constitutional law experts testified. Professor Robert A. Sedler of Wayne State University School of Law represented the City of Detroit and Mayor Coleman A. Young in a 1980 federal court suit seeking to compel the Census Bureau to make a statistical adjustment to the 1980 enumeration for the racially differential undercount. Professor A. T. Alexander Aleinikoff teaches both constitutional and immigration law at the University of Michigan Law School.

Daniel A. Stein, Executive Director of the Federation for American Immigration Reform (FAIR) testified. FAIR filed the suit in 1980 to compel then Secretary of Commerce Philip Klutznick to exclude illegal aliens from the census count, [*Federation for American Immigration Reform v. Klutznick*, 486 F. Supp. 564 (D. D.C. three judge court, 1980)]. It is now a party plaintiff in a similar suit recently filed. *Ridge v. Verity*. Co-plaintiffs include forty-two congressmen and the states of Pennsylvania, Kansas, and Alabama.

Dr. Juliette Okotie-Eboh from the planning department of the city of Detroit told of the serious impact the census count has on the allocation of federal (and state) grant; and Dr. Allen Schirm of the Population Studies Center of the University of Michigan spoke of new demographic and statistical techniques for conducting a census.

The topics concerned a series of bills (i) to compel the Secretary of Commerce to make statistical adjustments to accommodate the "undercount" of minorities and dispossessed; (ii) to compel the Secretary of Commerce to exclude the illegal aliens from the census count; and (iii) to compel the Secretary of Commerce to include the overseas servicemen and women, federal civilian employees, and dependents in the 1990 census count.

The census count will determine the reapportionment of seats in the House of Representatives. It will impact on some 107 Federal programs which use census data as a factor in allocating United States dollars to the various localities; the education, headstart and job training laws for example. The Census count may even determine the outcome of the 1992 Presidential election. Each state is represented in the Electoral College (which elects the President) in proportion "to the whole number of Senators and Representatives to which the state may be entitled in the Congress", [United States Constitution, Art. 11, Sec. 1, cl. 2.]. Since 1930, Massachusetts, New York and Pennsylvania have lost a total of 18 seats in the Electoral College, while California, Florida and Texas have gained 36. [*New York Times*, July 8, 1988, p. A 26.] It makes a difference.

Should this trend continue, political power will shift further from the states of the Northeast and Midwest to the South and Southwest. Small wonder then that the Committee on Post Office and Civil Service, and its subcommittee on Census and Population have conducted a wide series of hearings and heard from witnesses, both government and private, expressing a wide gamut of opinions on a number of diverse topics.

The Constitution requires an "actual Enumeration" of the population every "term of ten years". [Art. 1, Sec. 2 cl. 3.] Thereafter, representatives are apportioned among the several states "according to their respective numbers, counting the whole number of persons in each state". [The Fourteenth Amendment Sec. 2] There are 435 seats. Each state gets "at least one representative" [*Ibid.*] the remaining seats are divided among the states according to their population. Because of migration patterns the experts estimate that Illinois, Michigan and Ohio might lose two seats each; that New York might lose as many as five, and Pennsylvania either two or three seats. California, Florida, and Texas are expected to gain perhaps three, four or five seats each. On the other hand, the representation of twenty-six states will

not be affected at all. [Huckabee, *House Apportionment Following 1990 Census: Preliminary Projections*, July 8, 1987.]

I. THE "UNDERCOUNT"

Nothing can be done to change these results; unless of course something can be done about the "undercount". Public health statistics record how many black males are born, how many die. From this, our witnesses estimate with fair accuracy how many are alive. But on census day (April 1 of the decennial year) approximately 20 percent of the black males between the ages of 20 and 45 may not be counted.

In 1980, blacks were 11.7 percent of the population, but constituted 53 percent of those not counted in the Census of that year. Overall, more than 15 percent of young and middle-aged blacks were not counted. [U.S. Bureau of the Census. *Coverage of the Population in the 1980 Census*.] They lurk in the ghettos of our major metropolitan areas, and are not part of the "actual Enumeration" required by the Constitution. Hence the "undercount"; tilting political power and Federal grants from the have-nots to the haves.

Mayor Edward K. Koch emphasized the significance of the acknowledged 1980 "undercount" of over 524,000 in New York City:

One crucial effect of the undercount is to deprive the City of its full share of representation in Congress and in the New York State Assembly. What that means is that we have not been fully represented in political decisions that fundamentally affect us. This is not only unfair; it is unconstitutional.

A second effect is that the City has lost between \$28 million and \$52 million annually in Federal fund under certain programs with formulas tied to population. Over a period of ten years, this translates into a loss of up to half a billion dollars in services to New York. We have also lost state funds under programs similarly tied to population. [*Impact of Legalization Process On Counting Undocumented Aliens in Decennial Census*, Hearing before the Subcommittee on Census and Population of the Committee on Post Office and Civil Service, House of Representatives, 100th Cong. 1st session (June 1, 1987), p. 13.]

Frederick A.O. Schwartz, the former Corporation Counsel of New York, followed up with testimony that:

The disproportionate undercount affects lots of people—blacks, hispanics, aliens—poor people in general, residents of high-crime urban areas, persons with unconventional living arrangements, like people who are doubled up, and persons whose English skills, whose literacy skills, are weak or nonexistent.

Every one of those classes of persons tends to be disproportionately undercounted. And they tend to live, disproportionately, in areas like New York and Los Angeles. *Id.* at 27.

Attorney Schwartz concluded on a sober and foreboding note:

As you know, under the original Constitution, blacks were counted as three-fifths of a person, officially in the Constitution they were counted as three-fifths of a person.

Today, unofficially, because of the Census undercount, blacks in our central cities are counted as about four-fifths of a person, and the hispanics, it's the same degree of undercount. *Ibid.*

From three-fifths to four-fifths in 200 years is not a record we can let stand. We must aim for five-fifths.

New York was not the only city where this mal-apportionment existed. The city of Detroit had an estimated "undercount" of 48,000 in the 1980 census, and Mayor Coleman A. Young sued the Secretary of Commerce to compel a statistical adjustment. [*Young v. Klutznick*, 497 F. Supp. 1318 (E.D. Mich. 1980), reversed on other grounds, 652 F. 2d 617 (6th Cir. 1981), cert. den. 455 U.S. 939 (1982).] A number of other states, cities and counties did the same. [The cases are cited and discussed in Note, *Demography and Distrust: Constitutional Issues of the Federal Census*, 94 Har. L. Rev. 841, 842-843 (1981).]

Generally, the lower courts held (1) that there had been an "undercount", (2) that there were statistical adjustment methods available that would produce more accurate census counts, and (3) that the Census Bureau was required to use such statistical methods. See, e.g. *Carey v. Klutznick*, 508 F. Supp. 420 (S.D. N.Y. 1980). These decisions against the Secretary of Commerce were reversed on appeal, primarily on procedural grounds. See, e.g. *Carey v. Klutznick*, 653 F. 2d 732, 737-738, (2d Cir. 1981); holding that the district court overlooked the impact on other cities and states that arguably should have been joined in the action. The Supreme Court refused to review. See, e.g. 455 U.S. 999 (1982).

Throughout the litigation the Secretary of Commerce contended first and foremost that the "actual Enumeration" required by the Constitution means a "headcount"; and a "headcount" means that modern demographic techniques to augment the actual "headcount" must be kept in the closet. As backup to this position, the Secretary argued in the alternative that there was no accurate method available to adjust the population data as acquired from the "headcount". The courts accepted this proposition. [See, e.g. the final decision in the New York suit, *Cuomo v. Baldrige*, #80 Civ. 4550, (S.D. N.Y. Dec. 8, 1987); Alexander Lurie, *Adjusting the 1990 Census, Background and A Pro-Con Analysis*, CRS Report for Congress, April 18, 1988, at 7.]

In 1980, Director Barabba of the Census Bureau stressed the need for continuing research in the area of "undercount measurement," and he forecast some progress. In 1982 an "undercount" research staff was established in the Statistical Research Division of the Bureau of the Census. [Lurie, *infra* at pp. 6-7 *1990 Census Adjustment Procedure and Coverage Evaluation*; Hearings before the Subcommittee on Census and Population of the Committee on Post Office and Civil Service, 99th Cong. 2nd. sess. (July 24, 1986) p. 3.] In July of 1986, Barbara Bailar, the Associate Director of the Census Bureau for Statistical Standards and Methodology reported progress in this area. Subsequent witnesses, mostly leading statisticians from academia, reiterated that it was now feasible, as a technical matter, to adjust the 1990 census to minimize the "undercount". Subsequently, in 1987, Professor Michael Stoto of Harvard testified that field tests in Los Angeles and Mississippi indicated that a Post Enumeration Program could be integrated into the "actual Enumeration" to reduce the differential undercount. He exclaimed that the "research and planning of the Bureau's undercount staff in this decade has been truly impressive". [*Census Undercount and Feasibility Of Adjusting Census Figure*, Hearing before subcommittee on Census and Population, of the Committee on Post Office and Civil Service, 100 Cong. 1st. Sess. Aug. 17, 1987, p. 51.]

Then came a bombshell. On October 30, 1987, Under Secretary of Commerce Robert Ortner announced that the Census Bureau would not adjust the 1990 Census "for purported undercount of population subgroups." At subsequent hearings Barbara Bailar, since retired from the Census Bureau, charged that Ortner's decision "was dressed up like a technical decision when everyone knew it was a political decision." She added that "The Census Bureau knows how to correct the counts . . . (and) the integrity of the census will be irreparably damaged if the official census number are uncorrected." Secretary Ortner denied that there was "political pressure, political influence, and a political decision". Congressman Charles Schumer disagreed and categorized the decision to ignore the "undercount" problem as "a raw exercise in partisan politics." [Lurie, *note—infra* at 10 to 11.]

Congressman Dymally introduced a bill, H.R. 3511, the *Decennial Census Improvement Act of 1987*, to require the Secretary of Commerce to adjust the population data to correct for any undercount or overcount, and Senator Moynihan introduced a companion bill in the Senate. (S. 1942)

II. THE ILLEGAL ALIEN

Not only is there a big city "undercount," but to many people who testified before our committees, there is an "overcount"; as well, namely, the alien who is illegally here and who is included in the "actual Enumeration". These witnesses suggest, vigorously so, that the illegal alien is not to be counted as part of "the whole number of persons" in each state. They protest that illegal aliens must be eliminated from the 1990 census: at least as far as the reapportionment of the House of Representatives is concerned.

Undeniably, the illegal alien is a "person" within the contemplation of the "due process" and "equal protection" clauses of the Fifth and Fourteenth Amendment. The Supreme Court so held some 100 years ago. See, e.g. *Wong Wing v. United States*, 163 U.S. 228 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). Undeniably the illegal alien is a "person" entitled to a free education at state expense; and "employee" entitled to all the rights of other "employees" under the National Labor Relations Act. The Supreme Court so held in recent terms of court. *Plyler v. Doe*, 457 U.S. 202 (1982); *Sure-Tan Inc. v. Labor Board*, 467 U.S. 883 (1984). However, these witnesses assert, the mere fact that the illegal alien is a "person" within the contemplation of Federal Laws, the Fifth Amendment, and the first section of the Fourteenth Amendment (the Equal Protection Clause) does not compel the conclusion that he is also a "person" within the contemplation of section 2 of the Fourteenth Amendment (the Apportionment of the House clause). Nitpicking? A slender reed on which to hang a weighty constitutional contention? Perhaps, but nonetheless

these witnesses insist that as a matter of constitutional law the illegal alien should and must be excluded from the 1990 census Enumeration. [See, e.g. testimony of Daniel A. Stein, Executive Director of the Federation For American Immigration Report (Fair) before the Committee on Post Office and Civil Service, United States House of Representatives, 100 Cong. 2d. Sess. (June 24, 1988).]

Their exclusion might well make a difference. David C. Huckabee, an expert from the Congressional Research Service, reviewed for the Committee both the estimates regarding the past 1980 census, and the projected estimates for the 1990 census.

It was estimated in 1980 that somewhat over two million illegal aliens were included in the census Enumeration. Had they not been included, California and New York probably would have lost seats in Congress, Georgia and Indiana probably would have gained a seat each.

Projecting ahead, it is estimated that should two million illegal aliens be eliminated from the 1990 Enumeration, California and Texas would each lose a seat, with Pennsylvania and West Virginia the gainers. Some put the current illegal alien population at four million; twice that of 1980. Should this number be excluded from the 1990 census, California could lose either two or three seats, Texas one. The gainers with one seat each could be either Kansas, Montana, North Carolina, Ohio, Pennsylvania, or West Virginia.

All this, of course, is speculative. Mr. Huckabee acknowledged that "population projections for predicting apportionment after the census . . . are somewhat off the mark." For example, the Census Bureau's best population projection for 1980 (compiled in 1979) was "far wide of the mark." The reason? "Very small population differences can make, and have made, a difference in apportionment". In 1970, for example, "a switch of only 300 people" could have resulted in switching the last assigned seat in the House of Representatives from Connecticut to Oklahoma. This explains why population projections for the 1990 census differ when estimated by different teams of admittedly qualified experts. [*Apportionment of the House after the 1990 Census: Constitutional and Practical Implications of Excluding Illegal Aliens*, Testimony of David C. Huckabee before the Committee on Post Office and Civil Service, 100th Cong. 2d Sess. June 24, 1988.]

Whatever the accuracy of the illegal alien count might be, four bills have been introduced thus far in the 100th Congress to exclude illegal aliens from the 1990 census. [H.R. 3639 (Rep. Petri), H.R. 3814 (Rep. Ridge), H.R. 4243 (Rep. Daub), and S. 2013 (Sen. Shelby).] Added impetus was added to this drive when members of Congress, joined by private citizens, the states of Pennsylvania and Kansas, and private organizations spearheaded by the Federation for American Immigration Report (Fair) filed suit to compel the Secretary of Commerce to eliminate the illegal alien from the Census count. *Ridge v. Verity*, No. 88-0351, (W. D. Pa., filed Feb. 18, 1988).]

Census Bureau officials tell us that as a practical matter this cannot be done. [*Proposed Legislation to Exclude Undocumented Immigrants from the 1990 Apportionment Counts*, testimony of Dr. John G. Keane, Director of the Bureau of the Census before the Subcommittee on Census and Population, Committee of Post Office and Civil Service, 100th Cong. 2d Sess. June 23, 1988.] At the time of the 1980 census, legal aliens were required to register with the Immigration and Naturalization Service. It was then possible to compare that number with the larger number of aliens (both legal and illegal) reported in the census. The remainder, after technical adjustments, comprised the estimate of illegal aliens. But legal aliens no longer report to the Immigration and Naturalization Service; and there is no other qualified source from which to gain the number of aliens lawfully abiding in this country.

A substitute technique suggested by those seeking to exclude the illegal alien is simply to ask the census respondent to list all members of the household who are lawful residents; and then count only the number of lawful residents for apportionment purposes. Dr. John G. Keane, Director of the Census, fears that if asked about his status (either legal or illegal) the respondent might simply trash the questionnaire; whether the census questions be ingenious or ingenuous. Thus the census results would be skewed. Legal aliens, he testified "may misunderstand or mistrust the census and fail or refuse to respond"; illegal aliens "may either avoid the census altogether or deliberately misreport themselves as legal residents in the census". [*Id.*]

This is all *deja vu*. In 1929 Alabama's then Senator Hugo Black introduced a bill in the Senate to exclude illegal aliens from the 1930 census count. The remarks of Maryland Senator Tydings in opposition are appropriate to today's debate. He asked this rhetorical question:

"Anyone coming into the country illegally would have to lie or sneak in and if he lied his way in does the Senator think the answers we would get in these statistics

would justify the expense and trouble that would have to be entailed to obtain the information?" [71 Cong. Rec. 2078 (May 28, 1929).]

The Hugo Black proposal was defeated by a vote of 56 to 24. [*Ibid.*]

Even if the Census Bureau had the capacity to identify and count the number of illegal aliens in our midst, it is extremely questionable that the constitution would permit their exclusion. This seems evident from the language of the Constitution, equally so from its history which predates the birth of our nation.

A. The Continental Congress

In 1774 delegates from the 13 colonies assembled in Philadelphia to frame common concerns and grievances for presentation to the Mother Country England. Thus was born the Continental Congress. Some colonies sent two delegates, some as many as seven; and the issue arose early on as to how voting rights were to be apportioned. Since each colony was in a sense "sovereign", it was decided that each state would have equal (i.e. one) voice and vote. [George Curtis, *History of the Origin, Formation and Adoption of the Constitution of the United States* (Harper & Bros. 1854), p. 16., hereafter referred to as Curtis.] But those who wanted voting power based on size, wealth or population insisted from inserting in the "one colony one vote" resolution, a "caution that would prevent its being drawn into precedent." [Id. at 17.]

When the Second Continental Congress assembled after the battle of Lexington, it was necessary to provide logistical support for the fighting forces in the field. How was the new government, and the war it waged, to be financed. Should each state be assessed according to its equal representation in the Congress; or should the states be taxed according to their ability to pay? And if the later, should not those who paid the larger amount have larger proportionate representation in the Congress?

The result of this debate was an uneasy compromise. Each state would continue to have one vote in the Congress, but each state would be assessed a tax on the basis of its ability to pay. [Id. at 29.] But how was "wealth" to be measured. it was first suggested that population be the measure of wealth: but it was impossible to compromise the dispute between the Eastern and Southern States as to the rate at which slaves should be counted. The Eastern states wished to have them counted in a near ratio to the freed person, and they rejected the Southern State's proposal that slaves be counted as only half a man. [11 Curtis, p. 213. n. 2.]

Consequently, it was decided that taxes would be assessed against each state according to the valuation of its land. But land valuation is a tricky subject, and endless disputes ensued in this regard. Some states simply refused to pay what they considered to be outrageous assessments.

The search for a compromise method of financing the government went on. Proposals to raise funds by direct taxes on imports and exercises failed to carry; as did proposals giving the Continental Congress authority to levy direct taxes on individual landowners. [Id. at pp. 176 to 177.]

Finally, on April 18, 1783, the Continental Congress agreed to a proposal offered by Alexander Hamilton to substitute population as the measure of wealth in the place of land. Hamilton proposed a "triennial census" to count in each state:

the whole number of white and other free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description except Indians not paying taxes. [1 Curtis at 213, n. 2]

The significance of this proposal for present purposes is that it was subsequently adopted by the Founding Fathers as the basis for apportioning the House of Representatives.

"Aliens" of course, were included within the 1783 concept of "citizens and inhabitants of every age, sex, and condition." Indeed, there was then no national government, no national citizenship. Immigrants were welcome, immigration encouraged. Alexander Hamilton was just one of the many foreign-born who played significant roles in the formation of our government and the Constitution we cherish.

B. The 1787 Constitutional Convention in Philadelphia

On May 25, 1787, a quorum of the delegates met in Philadelphia and began work on a new Constitution (Rhode Island never did send delegates). On May 29th, the Committee of the Whole began consideration of a plan submitted by Virginia. It began with a resolution that:

The rights of suffrage in the national legislature ought to be proportioned to the *quotas of contribution*, or to the *number of free inhabitants*, as the one or the other rule may seem best in different cases. [A. Prescott, *Drafting The Federal Constitution*, Greenwood Press (1968), p. 275.]

Virginia was the largest state in terms of population, and one of the wealthiest. Thus it is not surprising that its proposed plan would base representation in Congress on either "the number of free inhabitants," or on the "quota of contributions." New Jersey, a small state, immediately counterproposed that each state have equal representation in Congress, following the model of the Continental Congress.

Thus began a series of debates which pitted small states against large states, rich states against poor states, slave states against free states.

Was there to be one Chamber or two? If bicameralism, was each state to have equal representation in both the House and the Senate? The smaller states argued vigorously that this must be, for at that time in the debate the Virginia Plan contemplated that the Senate would appoint the President and other high government officials. The large states were equally adamant that representation in *both* Houses be based on population. They feared they would be called upon to pay the larger share of the taxes, and thought that representation should be apportioned accordingly. (He who pays the piper should call the tune.)

There was dispute between the slave and non-slave states. The slave states feared, deeply, that if all states had an equal vote in each chamber, the free states (seven of them) would put an end to the slave trade under the proposed power of Congress to regulate commerce.

All the original states thought some limitation should be put on the new states which might be included within the Union. The population trend was westward to Kentucky, Tennessee and Alabama, with a potential conflict with the Spanish territories in Florida and Louisiana. The Eastern seaboard states feared domination by western "war hawks," and the imposition of taxes on the East to finance and fight Western interests. Delegates from Pennsylvania told how, for this reason, the older counties of eastern Pennsylvania had denied the newly created western counties equal representation in the state legislature.

The result of these clashes of interests was a series of compromises.

Each state would have equal representation in the Senate (with the added Constitutional protection that "no State, without its Consent, shall be deprived of its equal Suffrage in the Senate," [Art. V], representation in the House was to be apportioned based on population.

The President would be elected by an Electoral College, which the large states would dominate as each state would cast votes proportionate to its Congressional delegation. It was anticipated, however, that no candidate might gain a majority of votes in the Electoral College, and the election would move to the House where "the Votes shall be taken by States, the Representation from each State having one Vote." [Constitution, Art. 11, sec. 1. cl. 3.]

Congress would have power to regulate commerce "with foreign nations and among the several states," but the slave trade could not be "prohibited by the Congress prior to the year 1808." [Constitution, Art. 1 sec. 9, cl. 1.]

As for the new states, their representation in Congress was to be apportioned "according to their respective number." [Constitution, Art. 1 sec. 2 cl. 3.]

This leads us back to the debate on the apportionment of representatives in the House of Representatives.

A number of options were well known. The basis of representation could have been made on the whole number of *voters*, or it might be confined to the *white inhabitants*; or it might include all the *free inhabitants* of every race, excluding only the slaves; or it might embrace the *whole population* of each States. [11 Curtis, *History of the Origin, Formation and Adoption of the Constitution of the United States*, p. 44.]

The provision finally adopted was taken verbatim from the 1783 Alexander Hamilton resolution in the Continental Congress, "the whole number of white and other free citizens and inhabitants, or every age, sex, and condition . . . and three fifths of all other persons not comprehended in the foregoing. . . ."

Other models were known and rejected. New York's constitution provided in Article V that the number of representatives in the State Assembly would be proportional to the "number of electors in the said counties." Virginia, Maryland and Georgia similarly based apportionment in the state legislature on the number of "electors," or persons with the "right of suffrage." Pennsylvania, on the other hand, based legislative representation on the proportion of "taxable inhabitants. [Statement of David W. Debruin before the Subcommittee on Census and Population, Committee on Post Office and Civil Service, 100th Cong. 2d Sess. (June 23, 1988), p. 13.]

Representation in the House of Representatives could not have been based on the whole number of voters, as each state had different voting qualifications. Although all imposed conditions of age, gender, residence, and wealth, they differed in degree

and kind. Thus, New Hampshire restricted the franchise to male inhabitants of "twenty-one years and upwards" "excepting paupers." New Jersey restricted the franchise to men "of full age who are worth fifty pounds." In North Carolina it was necessary to possess a freehold of fifty acres of land to vote for the Senate, whereas a "freeman who had paid public taxes could vote for members of the house of commons." Further restrictions and limitations on the state franchise when the Federal Constitution was adopted are set forth by the Supreme Court in *Minor v. Happersett*, 88 U.S. 162, 172 to 173, (1874) (sustaining the right of Missouri to exclude women from the franchise).

Most states imposed some kind of religious qualifications on exercise of the franchise. [See Morton Borden *Jews, Turks, and Infidels*, University of North Carolina Press.] Typical was the 1776 North Carolina Constitution provision that "no person, who shall deny the being of God or the truth of the Protestant religion, or the divine authority of the Old or New Testaments, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the civil department within this State." [Id. at p. 11.] The Constitution of New York (1777) permitted Jews to hold office, but not Catholics. The Constitution of Maryland (1776) permitted Catholics to run for office, but not Jews or freethinkers. The Massachusetts constitution of 1780 authorized all "christians" to hold office; including Catholics who renounced the superiority of papal authority in any matter, civil, ecclesiastical or spiritual." [*Jews, Turks, and Infidels*, pp. 12 to 13.]

The Founding Fathers did the only thing possible when it came to setting qualifications for those who would elect members of the House of Representatives. They based the franchise for Federal elections on the "Qualifications requisite for Electors of the most numerous Branch of the State Legislature." [U.S. Constitution; Art. 1, Sec. 2.] But they rejected apportioning the House of Representatives on the basis of "voters."

The refusal to apportion the House of Representatives on the basis of the franchise was mentioned forcibly when the Constitution was offered to the states for adoption. James Madison explained it in full in *Federalist No. 54*. "The qualifications on which the right of suffrage depend", he wrote, "are not perhaps the same in any two States. In some of the States the difference is very material." He then concluded that:

In every State, a certain proportion of *inhabitants* are deprived of this right by the Constitution of the State, *who will be included in the census by which the Federal Constitution apportions the Representatives.* (Emphasis supplied.)

It was also impracticable to confine the basis of representation to the *white* inhabitants of the States. Some of the states had a large number of free blacks; regarded as citizens in some of the states but not in others. Virginia had nearly twice as many "free colored persons" as any other State; and its original proposal contemplated that they be counted when apportioning representation in Congress. [II Curtis, p. 45.]

It was equally difficult to base representation on *free inhabitants*, as proposed by Virginia as an original proposition. South Carolina insisted that "slaves" be counted as "inhabitants" (if representation was to be based on "numbers") or as "chattels" (if representation was to be based on "wealth"). [II Curtis, pp. 46 to 47.] Gerry of Massachusetts bridled at this. "Why," he asked, "should blacks, who were property in the South, be in the rule of representation more than the cattle and horses of the North?" [Prescott, *Drafting The Federal Constitution*, p. 286.]

Finally, on July 10, Edmund Randolph of Virginia moved that representation be based on population according to a census "once within the term of every ——— years" (the blank to be completed subsequently); to be counted in this census were "all the inhabitants in the manner and according to the ratio recommended by (the Continental) Congress, in their resolution of the eighteenth day of April, 1783, (the one introduced by Alexander Hamilton); and that the legislature of the United States shall arrange the representation accordingly." [Prescott at p. 361.] To repeat, this would include both "free citizens and inhabitants," except Indians, "of every age, sex, and condition." The Randolph motion was adopted by a vote of "Yeas 6," "Nays 2," with Massachusetts and South Carolina divided. It was referred to the Committee on Style, and came out as we know it today:

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, *according to their respective Numbers*, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. (Emphasis supplied.)

It was also agreed that the original House of Representatives would consist of sixty-five members, divided among the states as follows:

New Hampshire.....	3
Massachusetts.....	8
Rhode Island.....	1
Connecticut.....	5
New York.....	6
New Jersey.....	4
Pennsylvania.....	8
Delaware.....	1
Maryland.....	6
Virginia.....	10
North Carolina.....	5
South Carolina.....	5
Georgia.....	3

[Prescott, pp. 385 to 386.] This was to be followed by a census within six years; and once within the term of ten years afterwards. [*Id.*]

The debate was over. The Constitution was ratified by the requisite number of states on June 21, 1788. The first Congress convened on March 4, 1789. The first census was taken in 1790. The results were enumerated for each state under four different headings: "Whites," "Free Colored," "Slaves," and "Total." There were no distinctions based on the franchise, gender, age, citizenship, alienage, or other condition. This initial census, coming so close on the heels of the Convention, most certainly was conducted as contemplated by those who framed the Constitution.

C. The treatment of aliens

Philip Stein, FAIR, and others who favor the exclusion of illegal aliens from the census count tell us that the first immigration law was not enacted until the 1880's. They argue from this that neither the history of the 1787 Constitutional Convention, nor the 1866 history of the Fourteenth Amendment (shortly to be discussed) has any relevance. Their ultimate conclusion that the Framers did not consider, thoroughly consider, the role of the alien in our body politic is completely belied by our history.

The Founding Fathers were well aware that the census would include aliens. Ours was a country of immigrants, and the related issues of immigration, naturalization, and citizenship loomed large at the Philadelphia convention. It could not have been otherwise, for at the Convention there were "large numbers of persons of foreign birth who had served the country of their adoption with great distinction and unsuspected fidelity." [11 Curtis, p. 204.] These include Alexander Hamilton, James Wilson, Robert Morris and Fitzsimmons. [11 Curtis, p. 197.] They had been made citizens of the States in which they resided, by the State power of naturalization.

The states encouraged immigration. Pennsylvania, for example, gave foreigners all the rights of citizens after two year's residence. [Curtis, p. 206, n. 1.] but the rules for naturalization varied from state to state. Rhode Island, discriminated on the basis of religion. Jews lived there "as strangers." The application of Jews for naturalization had been denied in the immediate pre-revolutionary years. [*Jews, Turks, and Infidels*, p. 13.]

There was a need for clarification, for uniformity. In addition, there was a fear of foreign intrigue; that Spain, France or England might play one colony or section of the country against another. Some control was felt necessary to curb possible abuses by the states. Accordingly, Art. 1, sec. 8, cl. 4 of the Constitution lodges in the Congress the power to establish a *uniform* Rule of Naturalization throughout the United States. Congress thus can determine the conditions whereby the rights of citizenship may be acquired by persons of foreign birth. [11 Curtis, p. 199.]

The Founders also debated the issue of alienage when qualifications were set for Federal office holding. It was readily agreed that "no person shall be a representative" who shall not have been "seven years a citizen;" and that no person shall be a Senator who shall not have been "nine years a citizen." But should the Convention exempt from this rule the foreign born who had become citizens under state laws, and who had participated fully in the war for independence? Were they to be told that, although they could vote to ratify the Constitution, they would not be eligible to office under it until they had enjoyed the privileges of citizenship for seven years? The issue "elicited a good deal of feeling and was debated with some warmth." [11 Curtis, p. 209, n. 3.]

The final vote was 5 states in favor of the exemption (Connecticut, New Jersey, Pennsylvania, Maryland and Virginia) and 6 states opposed (New Hampshire, Massachusetts, Delaware, North Carolina, South Carolina and Georgia).

Ironically, the result was quite different when it came to the highest office, that of the Presidency. The Framers agreed that "No person shall be eligible to the Office of the President" except a natural born Citizen, or "A Citizen of the United States at the time of the adoption of this Constitution." Art. 111, sec. 1 cl. 5.

Controversy over aliens continued in the first years of our being. In 1799, late in the administration of John Adams, the Congress (in which sat many of those who had framed our Constitution) enacted one of the most controversial set of laws in our history—the Alien and Sedition Acts. The Enemy Alien Act is now codified at 50 U.S.C. sec. 21.

The Federalists then in power were Francophobic. They feared the French Revolution, feared its extension to our shores, feared its influence in the Presidential campaign of rival Thomas Jefferson. They sincerely believed the United States "was threatened with the resentment of a very powerful, very ambitious, and very revengeful nation," and were determined "not to submit to what France proposed, but (instead) to prepare for our defense in case she should attempt to carry them by force." [*Manifesto of General Macpherson to the Inhabitants of Counties or North-hampton, Etc.*, reading the riot act and instructing them to lay down their arms. Reproduced in *Fries Case*, 9 Fed. 826, 829, n. 1, Case No. 5126 (1799).]

Congress in 1798 enacted a tax on houses (to build up a war chest), the *sedition act* (making it unlawful to denigrate or disparage the government of its officials, thus muzzling the political opposition), and the *alien act*. In charging the grand jury in relation to an indictment that one Fries had organized armed resistance against the tax on houses, Mr. Justice Iredell referred to the "other measures of defense and precaution," namely the alien and sedition laws. These, he said, were:

deserving of the most particular attention, on account of the great discontent which has been excited against them, and especially as some of the state legislatures have publicly pronounced them to be in violation of the constitution of the United States. [*Fries Case*, 9 Fed. 826, 836, Case No. 5126 (1799).]

In short, everyone felt strongly, one way or the other, about the Alien Enemy Act. It provides that whenever there is a declared war between the United States and any foreign nation, or when "any invasion or predatory incursion is threatened," all "natives, citizens, denizens, or subjects of the hostile nation," on Proclamation of the President, shall be "apprehended, restrained, secured, and removed as alien enemies." 50 U.S.C. sec. 21.

This act, "passed at a time when trouble with France was imminent," *U.S. ex rel Zdunic v. Uhl*, 137 F.2d 858, 861 (2d Cir. 1943) was utilized during the War of 1812 against the citizens of Great Britain. [See, e.g. *Lockington v. Smith*, C.C. Pa. 1817, Fed. Case No. 8448;] and ever since as dictated by wartime necessity. Mr. Justice Washington in his charge to the jury in the *Lockington* case, made repeated references to the British Tories who, during the Revolution, were removed from our shores as alien enemies.

Thus there can be no question that those who framed our Constitution were well aware that the Census would enumerate "natives, citizens, denizens, and subjects of a hostile nation"; excluding only "Indians not taxed" and counting the slaves as three fifths of a man.

So matters stood until the Civil War.

D. The Fourteenth Amendment

Discussion of the Fourteenth Amendment must begin with the Thirteenth, which put an end to slavery or involuntary servitude in the United States "except as a punishment for crime whereof the party shall be have duly convicted." The end of slavery created economic chaos in the agrarian southern states, and they sought to circumvent the Thirteenth Amendment by pauperizing the newly freed black, and then criminalizing him as a vagabond. The infamous Black Codes enacted throughout the Confederate States made it illegal for a black to practice a variety of trades, made it illegal for a black to acquire property by purchase or inheritance, made it illegal for a black to testify in a court proceeding, and then made it illegal to be a pauper or vagabond. Those convicted were paroled back to their former plantation.

Congress reacted with what became the Civil Rights Act of 1866: which countermanded, point to point, the provisions in the Black Codes. President Johnson vetoed the Civil Rights Act on the theory that Congress lacked authority to deal with such matters, and Congress barely mustered the requisite two-thirds vote to override the veto. The package of Reconstruction Laws was in jeopardy.

This gave rise to the need for an additional Constitutional Amendment. The proposed Fourteenth Amendment declared that all persons born or naturalized in the United States "are citizens of the United States," and prohibited any state from (i) abridging the privileges and immunities of citizens of the United States, (ii) depriv-

ing any person of life, liberty or property without due process of law, or (iii) denying to any person the equal protection of the laws. The Amendment in section 5 gave Congress the power "to enforce, by appropriate legislation, the provisions of this Article."

There was a practical hitch that had to be solved. Prior to the Thirteenth Amendment the slaves were counted as three-fifths of a person. Under this formula, the Southern States in 1860 had 18 seats in the House. With emancipation, the slaves counted as five-fifths of a person, and the Southern states stood to gain an additional twelve to fifteen seats, thereby jeopardizing Republican control of the House. Needless to say, the "vision of thirty (Democratic) Representatives from the South, based upon a Negro population which was totally denied the right to vote, did not rest well with the majority of (Republican) members of the Thirty-ninth Congress." [G. Zuckerman, *A Consideration of the History and Present Status of Section 2 of the Fourteenth Amendment*, 30 Fordham L. Rev. 93, 94 (1961). This, and other pertinent information was included in the scholarly testimony of David W. DeBruin before the House Committee on Post Office and Civil Service Subcommittee on Census and Population, 100th Cong. 2d Sess. June 23, 1988.]

To meet this dilemma, Republican leader Thaddeus Stevens proposed that "a true census of the legal voters" (emphasis supplied) be taken. [Cong. Globe, 39th Cong. Sess. 9 (1865)]. Under this proposal to apportion the House on the number of voters, the South would lose seats if, as expected, blacks were denied the right to vote.

This proposal encountered fierce opposition from the New England states, which had disproportionately large populations of women and other non-voters. Were representation in the House to be based on "voters," instead of on population, New England would lose seats to the western states. For example, Massachusetts had a population of 1,221,412 but only 227,429 eligible voters; whereas California had a population of 358,110 and 314,369 eligible voters. [Note, *A Territorial Approach to Representation for Illegal Aliens*, 80 Mich. L. Rev. 1342, (356, n. 73 (1982).] The proposal to base representation on the number of voters was sent to a "Joint Committee of Fifteen on Reconstruction" and was defeated with every member from New England voting against it. [Kendrick, *The Journal of the Joint Committee of Fifteen on Reconstruction* at 45 (1914).]

It was then proposed to base representation on "the whole number of citizens in each State," with the proviso that "whenever in any State civil or political rights or privileges shall be denied or abridged on account of race or color, all persons of such race or color shall be excluded from the basis of representation." [Id at p. 1356, n. 75.]

This too was defeated: due to fear that some of the large states with a number of aliens would reject the amendment because it would decrease their representation.

Congressman Conkling of New York then proposed to base representation on the number of "persons in each State, excluding Indians not taxed." This was agreed to by the Committee of Fifteen. Conkling explained on the floor that this was consistent with the "present constitution" wherein "persons," and not "citizens" have "always constituted the basis of population." He added:

many of the large States now hold their representation in part by reason of their aliens, and the Legislatures and people of these States are to pass upon the amendment. It must be made acceptable to them. [Cong. Globe, 29th Cong. 1st Sess. 359 (1866).]

The 39th Congress was well advised of the consequences when it rejected "voters;" when it rejected "citizens;" and when it reaffirmed "persons" as the basis for apportioning seats in the House of Representatives. Senator Sherman of Ohio wanted to base representation on the "Number of male citizens who under the laws of the states are allowed to vote," and he argued forcibly that there is no reason:

why because the State of Massachusetts has a preponderance of women a voter in Massachusetts should count more than a voter somewhere else. There is no reason why, because in the city of New York there is a very large element of unnaturalized foreigners, a voter in the city of New York should have more political power than a voter anywhere else. [(Cong. Globe, 39th Cong., 1st Sess. 2986 (1866).]

Senator Sherman, along with the majority, ultimately voted to base representation in the House "upon population;" as he like other Republicans had agreed in the face of numerous substitute proposals to be bound by the decision of the caucus. [Zuckerman, note *infra* at 105.]

The outcome of these spirited considerations is set forth in section 2 of the Fourteenth Amendment:

Representation shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

The section guards against the possibility that the Southern States would disenfranchise the blacks by the proviso that when the right to vote in any Federal election is denied to any of the male inhabitants:

the base of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Thus, the decision of the Framers at the Constitutional Convention in Philadelphia, which goes back to the earlier proposal of Alexander Hamilton in the Continental Congress that the census include the "whole number of inhabitants" of "every age, sex, and condition," was reaffirmed when the States ratified the Fourteenth Amendment in 1868.

The basis of apportioning the House has not been changed since or before that time; and this too must be considered when considering the constitutionality of legislative change.

E. The historical gloss

Felix Frankfurter once observed that "deeply embedded traditional ways" of conducting official business give meaning to the Constitution, and that:

It is an inadmissible narrow conception of American constitutional law to confine it to the words of the Constitution and to disregard the gloss which life has written upon them.

"A systematic, unbroken, executive practice, long pursued to the knowledge of Congress" is the kind of "gloss" which "cannot supplant the Constitution, but which gives meaning to the words of a text." *Youngstown Sheet and Tube Co. v. Sawyer* 343 U.S. 579, 610 to 611 (1952), concurring opinion.

That is the situation here. There is a "systematic, unbroken, executive practice" of including aliens in the Census Enumeration.

The very first Census Statute, 1 Stat. 101 (1790) required that "every person whose usual place of abode shall be in any family on the aforesaid first Monday in August next shall be returned as of such family." [Testimony of Dr. Keane, June 23, note — infra.] Persons, "of every age, sex and condition" were counted. The results were tabulated under three headings: "whites," "free colored" and "slaves." Currently, since 1929, the language of the census statute requires "the tabulation of the total population by states." [46 Stat. 21.] The "total population" includes aliens. Thus, from 1790 to the present, the Census Enumeration includes the alien.

This administrative practice was "long pursued to the knowledge of Congress." There was fierce debate at the Constitutional Convention on whether "aliens" must sit out election to Congress for the next seven years. There was fierce debate when the Congress of John Adams enacted the Alien and Sedition laws, and when the Congress of Thomas Jefferson voted to recompense those convicted under the Act. There was debate over the Fourteenth Amendment in the 39th Congress when it was proposed that the Census Enumeration exclude the alien in our midst.

And the debate has continued in this century.

In 1929, then Senator Hugo Black introduced a bill which would exclude the alien from the census count. Michigan's Senator Arthur H. Vandenberg presented a legal opinion provided by the Legislative Counsel's Office of the Senate, which concluded that "there is no constitutional authority for the enactment of legislation excluding aliens from enumeration for purposes of apportionment of Representatives among the States;" that the term "persons" as used in the Constitution "includes aliens as well as citizens." [71 Cong. Rec. pp. 1821 to 1922. Testimony of Dr. John G. Keane, Director Bureau of the Census, June 23, 1988. See also note, *A Territorial Approach to Representation for Illegal Aliens*, 80 Mich. L. Rev. 1342, n. 4 (1982).]

In 1931, the subject was again before Congress. The House Judiciary Committee accepted the Senate legislative counsel's analysis that the statutory exclusion of aliens would be unconstitutional; and consequently took no further action on the pending resolution. [H.J. Res 97, 72d Cong. 1st Sess. (1932). See the testimony of G. Mario Moreno, for the Mexican American Legal Defense and Educational Fund, before the House Subcommittee on Census and Population, June 23, 1988.]

In 1940 the matter came on again. Debate terminated when Congressman Celler of the House Judiciary Committee remarked that:

The Constitution says that all persons shall be counted. I cannot quarrel with the Founding Fathers. They said that all should be counted. We count the convicts who are just as dangerous and just as bad as the Communists or the Nazis, as those aliens here illegally, and I would not come here and have the termity

to say that the convicts shall be excluded, if the Founding Fathers say they shall be included. The only way we can exclude them would be to pass a constitutional amendment. [86 Cong. Rec. 4372 (1940).]

From 1929 to 1947 a series of constitutional amendments were introduced to base apportionment on *citizen population*. They were referred to the appropriate committee, and not heard from again. [Note, A Territorial Approach to Representation for Illegal Aliens, 80 Mich. L. Rev. 1371, 1343, n. 4.]

In 1980, there were bills again to exclude illegal aliens from the apportionment. Representative Celler in the House, [86 Cong. Rec. 4372;] and Jacob Javits in the Senate, carried the day with the argument that under the constitution, all aliens, legal or illegal, must be counted in order to determine the apportionment base of the House of Representatives. [1980 Census: Counting Illegal Aliens, 96th Cong. 2d Sess., Mar. 26, 1980; and see the Congressional Research Service report on *Counting Undocumented Aliens In The Decennial Census* by Thomas M. Durbin, Legislative Attorney in the American Law Division, June 14, 1988.]

This year, Congressman Don Edwards, Chair of the House Judiciary Committee's Subcommittee on Civil and Constitutional Rights testified that "the history of our country is absolutely clear with regard to the counting of residents, both legal and illegal for apportionment purposes." He concluded that the pending bills "which would exclude undocumented residents from being counted in the Census 'must be' rejected as unconstitutional." [Testimony before the Subcommittee on Census and Population, Committee on Post Office and Civil Service, 100th Cong. 2d Sess (June 23, 1988).]

Finally, it must be noticed that in the case closest to point, *Fair v. Klutznick*, 486 F. supp. 564 (D.C. 1980, three judge Federal court) held that the plaintiffs lacked standing to compel the Secretary of Commerce to exclude illegal aliens from the census count. The court then said:

The language of the Constitution is not ambiguous. It requires the counting of the "whole number of persons" . . . The Framers must have been aware that this choice of words would include women, children, bound servants, convicts, the insane—and aliens.

Moreover, concluded the Court:

this interpretation of the constitutional language is bolstered by two centuries of consistent interpretation. The Census Bureau has always attempted to count every person residing in a state on census day, and the population base for purposes of apportionment has always included all persons, including aliens both lawfully and unlawfully within our borders. *Fair v. Klutznick*, 486, F. supp. at 576.

In sum, the language of the Constitution is not in any way unclear on this point. But if it were, "the gloss which life has written" upon it emphasizes that persons "of every age, sex, and description," are to be counted on Census Day.

All are counted, except the men and women in the Armed Forces who since the end of World War II have served our country in overseas posts.

III. MEN AND WOMEN SERVING THEIR COUNTRY OVERSEAS

In the absence of legislative action, the 1990 census will not include United States "persons" living outside the United States. [Testimony of Dr. John G. Keane, Director of the Bureau of the Census at the *Hearing on Census Residency Rules: Military Personnel Abroad*, Subcommittee on Census and Population of the Committee on Post Office and Civil Service, 100th Cong., 2d Sess. April 18, 1988 p. 5.] Approximately one and a half million Americans: Army, Navy, Airforce, Marines, Foreign Service Officers, other civilian employees; and their dependents will not have the chance to standup and be counted.

They can be counted, and have been counted in the past. From 1900 to 1940 the War and Navy Departments counted the number of military and naval servicemen abroad. But they were not included in the official census. In 1950 and in 1960 the Department of Defense counted those serving overseas in the military, plus overseas civilian employees. But they are not counted in the official census. [Testimony of Dr. David Armor, Principal Deputy Secretary of Defense, Force Management and Personnel. Id. at p. 19.] in 1970, during the Vietnam conflict, Americans overseas numbered 1,000,000 in the military, 68,000 in civilian employment, and approximately 450,000 dependents. Under President Nixon they were included in the official census. [Testimony of Dr. Keane note—*infra* at p. 17.]

It made a difference, military personnel were counted as residents of their last duty post. Since so many were airlifted to Vietnam from an airfield in Oklahoma, it gained a seat in Congress which otherwise would have gone to Connecticut. [Statement of Representative Constance Morella, Hearings, note—*infra*, p. 4.]

In 1980, under President Carter, there was no enumeration of the Department of Defense overseas population. [Testimony of Dr. Armor.]

In 1990 the Census Bureau and the Department of Defense plan to conduct a census of overseas military personnel and their dependents, and gather data on "characteristics of the overseas military population." The data will be collected by April 1, 1990 (Census Day), but the Administration does not intend to use it as part of the official Census count. [Testimony of Dr. Keane p. 6.]

Why not? Because, says Dr. Keane, except for the 1970 census, never since 1790 have Americans overseas been counted. Does this mean that nothing can be done for the first (actually second) time?

Dr. Keane further suggests "technical" problems. The first decennial census established the concept of "usual residence;" that is "where a person lives and sleeps most of the time." This is not necessarily the same as "legal residence, voting residence, or the place where a person is found on Census Day;" so it is a concept difficult to apply. [Id. at p. 5.]

Dr. Armor of the Defense Department also stressed that this is not a "simple and straightforward matter." Soldiers, he testified, could be counted in a number of ways: according to their "home of record," i.e. where they lived when they entered the military; where they last lived in the states; where they were last stationed; where they last voted; or where they maintain some legal residence for tax purposes. "There's a whole lot of different options," he concluded "so it's a matter of some complexity." [Note—*infra* at p. 22.]

But in other areas of complexity the Census Bureau has been extremely resourceful in the application of the "usual residence" concept. Dr. Keane gave the following illustrations. [Note—*infra* at pp. 13-15.]

The "homeless" are counted where they are found. *Business travelers* and *vacationers* away from their home on Census Day are counted "at their usual residence." Persons with *multiple residences*, including members of Congress, are counted at what they consider to be their usual residence. *Migrant workers* are counted at the camp where contact is made, unless they report a different "usual residence."

Those in a *mental institution*, or in a *prison*, are counted as residents of the institution. Persons in a short term health care facility (a hospital) are counted at their "usual residence."

College students living away from their parental homes are counted at their college residences. *Boarding school students* below the college level are counted at their parental home.

Land-based *members of the Armed Forces* stationed in the United States are counted as their usual residence "on base," unless they claim "off base" residence. *Crews of Navy ships*, *Coast Guard vessels*, *American flag merchant ships* are all counted either "on board ship" or "on shore," depending on the response.

Finding a "usual residence" for those serving abroad does not seem too difficult a task for the resourceful Bureau of the Census. Our witnesses did not think so. Roscoe Nix, President of the Montgomery County, (Maryland) NAACP testified that the men sent abroad to fight for their country in the Army know where they come from. [Note—*infra* at p. 42.] Douglas Jernigan, Supervisor of Elections for Montgomery County reminded us of the 1975 *Overseas Citizens Voting Rights Act* whereby citizens residing abroad may register and vote by absentee ballot in their last domicile. Over 60 percent of Americans eligible to register and vote under this law find no difficulty in doing so. [Id. at p. 35.]

The military can be counted and put in their "usual residence." So can the civilians.

Perry Shankle, President of the American Foreign Service Association (which includes overseas employees of the Department of State, Agency for International Development, the United States Information Agency, the Department of Commerce, and the Department of Agriculture) testified for the inclusion of civilians employed overseas in the census count. He saw no problem in ascertaining their home district. Most were registered to vote absentee, and there was no "hopscothching around in terms of residency." [Id. at pp. 25-26.]

On June 1, 1988, Mr. Dymally and Mrs. Morella introduced H.R. 4720, a bill to include members of the uniformed services and civilian employees assigned to posts of duty outside the United States, and their dependents, in the "census of population for purposes of the apportionment of Representatives in Congress." The bill provides that "the place of residence within the United States" for those serving overseas, shall be "the individual's last place of general abode within the United States for a period of 6 consecutive months or longer."

This, to paraphrase Dr. Armor of the Defense Department, seems "simple and straightforward," and should resolve the "technical" problems of Dr. Keane.

It can be done. It should be done. Since World War II we have stationed our troops abroad in unprecedented numbers. They, and their civilian counterpart, are part and parcel of our body politic. The practices, traditions, and limitations of Eighteenth Century census taking should not stand in the way of the Constitutional mandate that "Representatives shall be apportioned among the several States according to their respective numbers."

CONCLUSION

Census data are a powerful resource which has a dramatic impact on all citizens of the United State and their everyday lives. In 1980, a difference in the count of only 7,226 numbers gave the 435th seat in the House of Representatives to New York, away from Indiana.

Census data determine the sharing of Federal grants for our very sustenance, for a roof over our heads, for education and the highroad to a better life, to proper representation in the city council, the state assembly, the United States House of Representatives, and the Electoral College where the President is chosen.

It is essential that the 1990 census should be as complete and accurate as modern technology and processes can make it. The chips should fall as they may.

Our Founding Fathers required that there be an "actual Enumeration" of the "whole number of free Persons" within three Years after the first Meeting of the Congress, and within "every subsequent Term of Ten Years." The required census is to be conducted "in such Manner" as we in Congress "shall by law direct."

The burden is squarely on the Congress. It cannot be faithful to this trust unless it grasps the nettle and encourages the Census Bureau when it does right, and sets it on its proper course when it goes astray.

The hearings demonstrate a need to heed the undercount of minority groups in the ghettos of our cities; to count the aliens, both the legal and undocumented; and to include the men and women serving us in various military and civilian capacities abroad; in short, in the words of Alexander Hamilton, to include in the census "the whole number" of "citizens and inhabitants" of "every age, sex, and condition."

Our is a nation of inclusion, not exclusion; a nation where our tradition requires that we care for even the fallen sparrow. We must be true to this tradition wherever and whenever we can; even in such seeming mundane matters as our decennial census.

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January 13, 1988

CRS REPORT FOR CONGRESS

THE 1990 DECENNIAL CENSUS AND THE COUNTING OF ILLEGAL ALIENS

I. INTRODUCTION AND BACKGROUND

With the advent of the 1990 decennial census, a major issue has arisen whether, under Article I, section 2, clause 3 of the Constitution as amended by section 2 of the Fourteenth Amendment,¹ the Census Bureau is required to count or can exclude illegal aliens from the decennial census. Under these constitutional provisions, an "actual enumeration" of the population is required every ten years. Congress has specifically authorized the Department of Commerce and the Bureau of the Census to conduct the decennial census.

Sections 141(a) and 141(b) of title 13 of the United States Code provide :

- (a) The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the "decennial census date," in such form and content as he may determine, including the use of sampling procedures and special surveys. In connection with any such census, the Secretary is authorized to obtain such other census information as necessary.
- (b) The tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9

¹ U.S. Const. Art. I, § 2, cl. 3 provides in pertinent part:

"Representatives . . . shall be apportioned among the several states which may be included with this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of Free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by law direct."

U.S. Const. XIV Amend., section 2 provides in pertinent part:

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed." [Since the passage of the federal income tax statutes, there would not be any Indians who are not taxed and who would be excluded from the apportionment of the population.]

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months after census date and reported by the Secretary to the President of the United States.

The decennial census is used for various purposes, one of the primary ones being to provide sufficient statistical information concerning the population for the proper apportionment of the House of Representatives among the states. Under the Census Act,² the Secretary of Commerce has the responsibility to conduct the census and to calculate the number of persons in each state for the purpose of the reapportionment of the House of Representatives.³ The reapportionment of Representatives occurs by the method of equal proportions which allocates Representatives to the states so that they are most nearly proportioned to the actual population of the states. However, by this federal statute no state would have less than one Representative despite any substantial decreases in population.⁴ Besides the reapportionment and redistricting of the House of Representatives, the census is used for the reapportionment and redistricting of state legislative and local governmental bodies. It has also become the basis for the distribution of certain federal funds concerning certain federal assistance programs to the states.⁵

The tabulation of the population is to be completed within 9 months after April 1 of the decennial year and reported by the Secretary of Commerce to the President.⁶ As required by federal law, the President transmits the appropriate

² See generally title 13 of the United States Code relating to the census.

³ See 2 U.S.C. § 2a relating to the reapportionment of U.S. Representatives based on the decennial census.

⁴ Ibid.

⁵ See, e.g., Social Security Act, 42 U.S.C. § 302 et seq. relating to grants to the states for old-age assistance and medical assistance to the aged and the Community Development Act, 42 U.S.C. § 5301.

⁶ 13 U.S.C. § 141(b).

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apportionment figures reflecting the number of House seats to which each state is entitled to the Clerk of the House of Representatives, who must then send a certification of this number to each state.⁷

II. THE MEANING OF "WHOLE NUMBER OF PERSONS" UNDER ARTICLE I, SECTION 2, CLAUSE 3, AS AMENDED BY SECTION 2 OF THE FOURTEENTH AMENDMENT

Under Article I, section 2, clause 3, as amended by section 2 of the Fourteenth Amendment, the House of Representatives is to be apportioned among the states based on the "whole number of persons." At issue is whether that term means that all inhabitants, including illegal aliens, should be counted. An examination of the usage of the term "person" at the time of the adoption of the apportionment provision by the Constitutional Convention and its ratification, and at the time of the adoption and ratification of section 2 of the Fourteenth Amendment, would seem to indicate that aliens are to be included within the term "person."⁸ In the records of the Constitutional Convention of 1787, reference is made to the phrase "whole number of free citizens and inhabitants,"⁹ which number was to be the basis of the apportionment of the Congress and which was to be taken by a census within three years after the first meeting of the Congress and every ten years thereafter. The usage of the phrase "free citizens and inhabitants" would seem to indicate that authors of the Constitution concluded that the census should count not only free citizens but also any free inhabitants who were not citizens and arguably might have

⁷ 2 U.S.C. §§ 2a(a), 2a(b).

⁸ C. E. Turney, Legislative Counsel of the Senate, "Power of Congress to Exclude Aliens from Enumeration for Purposes of Apportionment of Representatives," 71 Cong. Rec. 1821 (1929).

⁹ M. Farrand, The Record of the Federal Convention of 1787, V. II, pp. 571, 590.

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been aliens. This phrase was adopted by the Convention and referred to the Committee on Style. The Committee on Style substituted the word "persons" for the longer phrase, "free citizens and inhabitants." This substitution was passed by the Committee on Style without comment or debate and was then made part of the Constitution without further debate or controversy.¹⁰ It is plausible then that the Framers intended that the term "persons" have the same meaning as "free citizens and inhabitants." Given this intent, the term "persons" could thus be construed to include noncitizens and aliens.

The Framers of the Constitution were aware of the necessity of making the distinction between citizens and noncitizens in regard to certain elected offices, as indicated in the following three clauses:

(1) U.S. Constitution, Article I, Section 2, Clause 2: No Person shall be a Representative who shall not ... have been seven Years a Citizen of the United States...."

(2) U.S. Constitution, Article I, Section 3, Clause 3: "No Person shall be a Senator who shall not have ... been nine Years a citizen of the United States...."

(3) U.S. Constitution, Article II, Section 1, Clause 5: "No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President...."

In contrast, the apportionment of Representatives was to be based on "the whole number of ... persons," without any reference to citizenship. Moreover, in the Federalist Papers, No. 54, of February 12, 1788, it was noted that the apportionment of Representatives was to be based on the aggregate number of inhabitants of the states.¹¹ Thus, it appears from the records of the

¹⁰ C. E. Turney, *supra* note 8, 71 Cong. Rec. at 1822.

¹¹ The Federalist Papers, No. 54, (Hamilton or Madison), Feb. 12, 1788, p. 342. And see, M. Ferrand, The Records of the Federal Convention of 1787 at p. 590.

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Constitutional Convention that the Framers were aware of a distinction between citizens and noncitizens for certain purposes. Since no qualification of citizenship was placed on those to be counted for congressional apportionment and the decennial census, it would seem that noncitizens and aliens may be included in that count.

When section 2 of the Fourteenth Amendment was debated and adopted by the Thirty-ninth Congress, first session in 1866, the meaning of the term "persons" was again under examination. Section 2 of the Fourteenth Amendment, in amending Article I, section 2, clause 3, essentially provides that Representatives shall be apportioned among the states on the basis of the "whole number of persons." In the Thirty-Ninth Congress, first session, a number of resolutions were introduced that proposed basing House representation and apportionment either on the number of qualified voters or on the number of citizens.¹² When the Fourteenth Amendment was before the House, the term "persons," rather than the terms "voters" or "citizens," was used in the text of section 2 as the basis for the apportionment of Representatives. This was due to the fact that "persons" had always been the basis for House apportionment in the past and that many states held representation in the House due to large numbers of aliens.¹³ When the Senate considered this amendment in 1866, it adopted the term "persons" rather than "voters" or "citizens" as the basis for the apportionment of Representatives since to base House apportionment on a category other than persons would result in the reduction of more than 2 million unnaturalized foreigners from the basis.¹⁴

¹² C. E. Turney, *supra* note 8, 71 Cong. Rec. at 1822.

¹³ Cong. Globe, 39th Cong., 1st Sess. 359 (1866).

¹⁴ Cong. Globe, 39th Cong., 1st Sess. 2986-2987 (1866).

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Thus, it seems clear from the congressional consideration of the Fourteenth Amendment that the legislators were aware that the term "persons" when used as the basis for the apportionment of Representatives included aliens within its meaning.

In the Seventy-first Congress (1929-1931), Congress considered legislation that would have provided for constitutional amendments to the apportionment provisions of the Constitution so as to alter the basis of apportioning Representatives by limiting the population to be apportioned to United States citizens and by excluding aliens, legal or illegal.¹⁵ During the consideration of the meaning of the constitutional phrase "whole number of persons" in the Seventy-first Congress, Congress apparently assumed that the total population of the United States, which would include aliens, was the constitutional basis for the apportionment of the House of Representatives.¹⁶

In the Seventy-sixth Congress, third session (1940), the issue of whether aliens should be included in the numerical count for the apportionment of Representatives was again raised. In the debate on this issue, Representative Celler asserted that aliens had been included in the base for congressional apportionment since the first Congress and that, if aliens were to be excluded from computations of populations for congressional apportionment, it would have to be done by a constitutional amendment.¹⁷ Rep. Celler argued that the term "persons" comprehended all individuals including, among others, convicts who have lost their citizenship and the right to vote and aliens who were in the

¹⁵ See, e.g., H.J. Res. 20, 101, 263, 356, 484, 71st Cong. (1931). Hearings were held by the House Committee on the Judiciary in the 71st Cong., 3d Sess. (1931). No further legislative activity occurred concerning these bills.

¹⁶ C. E. Turney, *supra* note 8, 71 Cong. Rec. at 1821-1822.

¹⁷ 86 Cong. Rec. 4372 (1940) (remarks of Rep. Celler).

United States illegally.¹⁸

In the Ninety-sixth Congress, second session (1980), hearings were held on S. 2366, a bill that would have required adjustments in census population figures for illegal aliens so as to prevent distortions in (1) the reapportionment of the House of Representatives, (2) the reapportionment of state legislatures, and (3) the allocation of federal funds under certain federal assistance programs.¹⁹ In the hearings, Senator Jacob Javits, a member of the Governmental Affairs Committee, asserted in his introductory statement that aliens, whether legal or illegal, must be counted as a matter of constitutional law for determining the numbers of Representatives that each state is entitled to in the House.²⁰ S. 2366 did not have any further legislative activity.

III. MAJOR SUPREME COURT DECISIONS CONSTRUING THE MEANING OF THE TERM "PERSONS"

In the 1886 Supreme Court decision of Yick Wo v. Hopkins, the Court held that the guarantees of section one of the Fourteenth Amendment extended to all persons regardless of race, color, or nationality and that the Amendment was not confined to the protection of citizens only.²¹ Thus, under this interpretation of the word "person", the phrase "whole number of persons," as used in section 2 of the Fourteenth Amendment, would seem to include citizens and noncitizens alike. An 1897 case holding that citizenship is to be accorded

¹⁸ Ibid.

¹⁹ 1980 Census: Counting Illegal Aliens, Hearings on S. 2366 Before the Subcomm. on Energy, Nuclear Proliferation, and Federal Services of the Senate Comm. on Governmental Affairs, 96th Cong., 2d Sess., Mar. 26, 1980.

²⁰ Id. p. 12.

²¹ 118 U.S. 356, 369 (1886).

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automatically to children born in the United States of resident alien parents. In United States v. Wong Kim Ark, the Supreme Court again emphasized that the provisions of the Fourteenth Amendment extend to all persons, citizens and noncitizens, since the provisions are universal in their application without regard to nationality.²² The Supreme Court reiterated this principle in Tran v. Raich, a 1915 decision striking down a State that limited the number of aliens that could be employed in certain businesses.²³

The Supreme Court has applied Fifth Amendment protections not only to persons who were citizens but also to persons who were noncitizens or aliens. In Wong Wing v. United States, an 1896 case, the Supreme Court concluded that all persons even aliens are entitled to Fifth Amendment due process protections.²⁴ And in 1901, the Supreme Court held in Li Sing v. United States that the alien in this particular case had not been deprived of certain Fifth constitutional rights.²⁵

In various congressional and state legislative redistricting cases, the Supreme Court has emphasized that the standard for reapportionment and redistricting was to be actual population. In the 1964 Supreme Court decision in Wesberry v. Sanders concerning congressional redistricting in Georgia, the Court asserted that under Article I, section 2 of the Constitution, population was to be the basis of the House of Representatives.²⁶ The Wesberry Court noted that the House of Representatives was to represent "people" and that the

²² 169 U.S. 649, 695 (1897).

²³ 239 U.S. 33, 39 (1915).

²⁴ 163 U.S. 228, 238 (1896).

²⁵ 180 U.S. 486, 495 (1901).

²⁶ 376 U.S. 1, 8, 9 (1964).

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number of Representatives assigned to each state should be determined in a manner that is based on the number of inhabitants in a state.²⁷ According to the Wesberry Court, the Constitution's goal was to provide equal representation for equal numbers of people in regard to the House of Representatives.²⁸ In the 1964 Supreme Court decision in Reynolds v. Sims, concerning the malapportionment of the Alabama state legislature, the Court again asserted that the language of the Constitution prescribes that the United States House of Representatives is to be chosen by the people and that the fundamental principle for congressional representation and state legislative representation is one of equal representation for equal numbers.²⁹ And in the 1983 Karcher v. Daggett Supreme Court decision involving a New Jersey congressional reapportionment plan, the Supreme Court stated once more that, under Article I, section 2 of the Constitution, House representation in Congress requires equal representation for equal numbers of people.³⁰ The Court held that, while precise mathematical equality may be impossible in regard to constitutional congressional reapportionment and redistricting, the constitutional equal representation standard requires that districts be redrawn so as to achieve population equality "as nearly as is practicable."³¹

In analyzing the major Supreme Court redistricting and reapportionment decisions for congressional representation and state legislative representation, it seems clear from the Court's holdings and rationales that

²⁷ Id. 13.

²⁸ Id. 18

²⁹ 377 U.S. 523, 560-561 (1964).

³⁰ 462 U.S. 725, 730 (1983).

³¹ Ibid., quoting Reynolds v. Sims, 377 U.S. at 377.

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redistricting and reapportionment under the Constitution are to be based on population, that is, on actual numbers of people or inhabitants, and not on any particular subgroups of that population, such as United States citizens, taxpayers, or qualified voters. The basis for such reapportionment and redistricting has been the "whole number of persons" or population that has been derived from the decennial censuses. The Supreme Court decisions have determined whether or not the various reapportionment and redistricting plans for the House of Representatives and for the state legislatures have achieved sufficient equality of population in the districts so as to be constitutional. The equality of population standard would seem to have included all inhabitants, even noncitizens and aliens, legal or illegal.

IV. FEDERATION FOR AMERICAN IMMIGRATION REFORM (FAIR) v. KLUTZNICK, 486 F. SUPP. 564 (D.D.C. 1980, THREE-JUDGE COURT), APPEAL DISMISSED 447 U.S. 916 (1980).

In 1980, a constitutional challenge to the 1980 decennial census was brought by the Federation For American Immigration Reform (FAIR) and other plaintiffs against the Secretary of Commerce on the ground that the census was unconstitutional in that it did not count illegal aliens separately and exclude them from the apportionment base. In FAIR v. Klutznick,³² the plaintiffs argued that the exclusion of illegal aliens from the congressional apportionment population base is mandated by the Constitution under Article I, section 2, clause 3, as amended by section 2 of the Fourteenth Amendment, since that provision contemplated only that lawful residents should be counted in the population data base for congressional apportionment purposes.³³ The issue

³² 486 F. Supp. 564 (D.D.C. 1980, three-judge court), appeal dismissed 447 U.S. 916 (1980).

³³ Id. 565.

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presented by the plaintiffs was whether the phrase the "whole number of persons" under Article I section 2, clause 3 of the Constitution, as amended by section 2 of the Fourteenth Amendment, included illegal aliens. The plaintiffs conceded that the phrase included all lawful residents both citizens and aliens, but they argued that it did not include illegal aliens.³⁴

The Census Bureau argued that it is constitutionally required to include all persons in the count of the decennial census to determine the congressional apportionment base including illegal aliens. Moreover, the Census Bureau noted that as a practical matter accurate methods of counting illegal aliens do not exist because of a lack of cooperation and fear of persecution on their part.³⁵

The three-judge court in FAIR v. Klutznick granted the defendants' motion for summary judgment on the ground that the plaintiff lacked standing to sue (1) by failing to show that any concrete harm would occur or be suffered by any one of them and (2) by failing to demonstrate that any equitable relief would benefit them personally.³⁶ In addressing the arguments for equitable relief, the three-judge court analyzed the constitutional meaning of the phrase "whole number of persons." The FAIR Court concluded that the language of the Constitution is not ambiguous and that illegal aliens were clearly persons within the meaning of that phrase. The Framers of the Constitution, according to the FAIR Court, not only were aware of their choice of words in basing apportionment on inhabitants or the "whole number of persons," but also meant to include aliens in this census base. The court further noted that for

³⁴ Id. 567.

³⁵ Id. 568.

³⁶ Id. 569-578.

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approximately two centuries, the Census Bureau has consistently counted all persons including legal and illegal aliens in determining the population base for apportionment purposes.³⁷

IV. CONCLUSION

It would seem that, under Article I, section 2, clause 3, as amended by section 2 of the Fourteenth Amendment, the phrase "whole number of persons" is to be the basis for congressional apportionment as determined by the census and would include aliens, both legal and illegal. In considering the original intent of that phrase, it would appear that the Framers of the Constitution meant to include all inhabitants, citizens and aliens alike,³⁸ within the base from which congressional apportionment would be determined. Moreover, the fact that every census since 1790 has included legal as well as illegal aliens in its count would seem to be indicative of the fact that the original intent of the Framers was to include such aliens.

Proposed constitutional amendments in the Seventy-first Congress (1929-1931) and in the Seventy-sixth Congress (1940) to exclude aliens from the census were seriously debated but eventually rejected. During the course of the debates concerning such constitutional amendments, opponents prevailed with their argument that the intent of the phrase "whole number of persons" meant that even legal and illegal aliens should be counted.

And in 1980, in the case of FAIR v. Klutznick, a three-judge district court rejected an attempt by certain legislators and concerned groups to require the Census Bureau to exclude illegal aliens from the apportionment

³⁷ Id. 576.

³⁸ The Federalist Papers, No. 54 (Feb. 12, 1788) at p. 342.

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population base as determined from the decennial census. The FAIR Court asserted that the constitutional requirement of counting the "whole number of persons" for apportionment purposes would include illegal aliens.³⁹

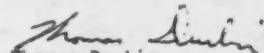
In the 100th Congress, first session, legislation has been introduced that would require the Secretary of Commerce to make adjustments in the total population figures in order that aliens living in the United States in violation of the immigration laws would not be counted in calculating the population for the apportionment of the House of Representatives.⁴⁰ However, it would appear that a constitutional amendment rather than a legislative act would be necessary to further amend Article I, section 2, clause 3, as amended by section 2 of the Fourteenth Amendment, to require that illegal aliens be excluded from the population base for apportioning congressional representation. A statutory exclusion of aliens from this base would seem to

³⁹ 486 F. Supp. 564, 576-577 (D.D.C. 1980), appeal dismissed 447 U.S. 916 (1980).

⁴⁰ H.R. 3639, 100th Cong., 1st Sess. (1987) introduced by Mr. Petri et al. on Nov. 10, 1987 and referred to the House Committees on the Judiciary and Post Office and Civil Service.

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violate the "whole numbers of persons" requirement and thus be unconstitutional.⁴¹


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⁴¹ See, e.g. C. E. Turney, supra note 8, 71 Cong. Rec. 1821 (1929) relating to a legal opinion by the Legislative Counsel of the Senate in the Seventy-first Congress that congressional statutory legislation excluding aliens from enumeration for congressional apportionment purposes would be unconstitutional.

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PROPOSED EXCLUSION OF ILLEGAL ALIENS FROM THE POPULATION
USED TO APPORTION THE HOUSE OF REPRESENTATIVES:
A METHODOLOGICAL AND POLICY ANALYSIS

SUMMARY

June 8, 1988

As the Congress and the Census Bureau review plans for the 1990 Census, there has been renewed interest in the issue of whether illegal aliens should be excluded from the census count used for apportioning seats in the House of Representatives.

Although aliens (both legal and illegal) have been included in the apportionment population since the first census in 1790, this practice has been challenged periodically. Bills have been introduced in the 100th and previous Congresses (and law suits have been filed) to block the Census Bureau from including illegal aliens in the apportionment count.

The source of 1980 census data on the alien population was the long-form census questionnaire, sent to about a fifth of the U.S. population. In keeping with established Census Bureau practice, the questionnaire did not attempt to distinguish between legal and illegal aliens. Absent a change in this practice, some means other than direct identification of illegals would be necessary if they were to be excluded from future apportionment counts.

This report describes and evaluates one such method, which was used to derive an estimate of 2,057,000 illegal aliens included in the 1980 census: the estimated number of aliens living legally in the United States at the census date was subtracted from the adjusted total number of aliens (legal and illegal) included in the census, and the difference between these two numbers was the estimate of illegal aliens. However, this method used data on legal aliens from an Immigration and Naturalization Service registration program that was discontinued in 1981. Unless the program is reinstated or an alternative program established, the method would be inapplicable in 1990.

Three alternative methods for excluding illegal aliens from the apportionment population are also discussed. A concern with all four methods is whether the results would be an accurate enough basis for allocating congressional seats.

If estimates had been used to adjust the 1980 apportionment population to remove illegals, four States would have been affected. California and New York each would have received one less seat than they were actually assigned, and Georgia and Indiana each would have gained a seat. However, because of the methodological uncertainties of predicting future apportionments, it can only be speculated as to what might happen if illegals were excluded from the 1990 apportionment count. These uncertainties include the fact that small population differences can make, and have made, a difference in apportionments. (In 1970, for example, fewer than 300 people decided the assignment of a House seat.) Also, illegal alien counts or estimates are difficult to make and population projections are imperfect predictors of future apportionments.

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PROPOSED EXCLUSION OF ILLEGAL ALIENS FROM THE POPULATION
USED TO APPORTION THE HOUSE OF REPRESENTATIVES:
A METHODOLOGICAL AND POLICY ANALYSIS

INTRODUCTION

From time to time, the issue of including aliens in the population count used to apportion the House of Representatives has come before the Congress. In 1929, a legislative effort was made to require the Census Bureau to count the alien population, both legal and illegal.¹ Proposals to exclude aliens from the apportionment population were advanced during the 1930s,² and nine similar bills were introduced from the 95th through 99th Congresses (1974-1987).³ Four bills introduced thus far in the 100th Congress--H.R. 3639 (Rep. Petri), H.R. 3814 (Rep. Ridge), H.R. 4234 (Rep. Daub) and S. 2013 (Sen. Shelby)--would exclude illegal aliens from the population count used to apportion the House.⁴ In each instance when this issue has been raised, it

¹ Black, Hugo L. Remarks in the Senate. Congressional Record, v. 71, May 28, 1929, p. 2078.

² Schmeckebier, Laurence F. Congressional Apportionment. Washington, The Brookings Institution, 1941. p. 86.

³ U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Census and Population. Improving Census Accuracy. Committee Print, 100th Congress, 1st Sess. Washington, U.S. Govt. Print. Off., 1987. p. 150.

⁴ For a summary of prior congressional activity and a legal analysis specifically directed at the issue of illegal aliens and apportionment, see: U.S. Library of Congress. Congressional Research Service. The 1990 Decennial Census and the Counting of Illegal Aliens. Report No. 88-62 A, by Thomas M. Durbin. Washington, 1988. Also see: Aliens and Congressional Districting. (continued...)

has been resolved in favor of continuing to include all persons considered to be U.S. residents (a category that excludes foreign diplomatic personnel living in embassies and foreign tourists) in the population used for apportionment.

Renewed interest in this matter stems from congressional attention to the plans for the 1990 census and a suit filed on February 18, 1988, by the States of Pennsylvania and Kansas, Members of Congress, private citizens, and the Federation for American Immigration Reform (FAIR). ⁵

The constitutional issue central to this controversy can be stated as follows: Absent a constitutional amendment, are illegal aliens excludable from the counts used for apportioning seats in the House of Representatives?

The issue revolves around defining the word "persons," as it is used in Article I, Section II, Clause II of the Constitution, and in Section II of the 14th Amendment (which says, in part, "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed"). This constitutional issue is discussed in detail in other CRS reports. ⁶ The weight of 190 years of census practice and congressional acceptance of such practice suggests that illegal aliens are "persons" who are eligible to be counted for purposes of apportioning the House. ⁷ It is possible, however, to argue that

⁴ (...continued)
Report No. 80-189 A, by Thomas B. Ripy and Michael V. Seitzinger. Washington, 1980.

⁵ Thomas J. Ridge et. al. v. William C. Verity et. al. D.C. W.D. Pa., Civ. Act. No. 88-0351 filed Feb. 18, 1988.

⁶ See: Durbin, The 1990 Decennial Census and the Counting of Illegal Aliens; and Ripy and Seitzinger, Aliens and Congressional Districting.

⁷ Ibid. (See especially: Durbin, The 1990 Decennial Census and the Counting of Illegal Aliens, p. 1-10.)

illegal aliens should be excluded because the "illegal" nature of their status did not exist at the time the Constitution was written.⁸

Whether the Constitution would permit a law excluding any part of the alien population, legal or illegal, from apportionment is beyond the scope of this report. The purposes of this analysis are: first, to set the issue in a historical perspective; second, to explain how estimates of illegal aliens, by State, were derived after the 1980 census; third, to evaluate these estimates, and this and other possible methods for excluding illegals from the 1990 apportionment population; fourth, to evaluate what the apportionment impact would have been in 1980 had such an exclusion taken place; and, fifth, to provide several illustrative apportionment scenarios for 1990.

At the outset, it can be stated that if a set of illegal alien estimates prepared by two Census Bureau employees⁹ had been used to adjust the apportionment population in 1980 to exclude illegals, California and New York would have each lost one seat in the House, and Indiana and Georgia would have each gained a seat, in comparison to their actual 1980 assignments. Speculation about what the impact of such an adjustment might be in 1990 is fraught with problems because of the number of assumptions required. Although

⁸ For arguments in support of excluding aliens from the census for apportionment, see: Ripy and Seitzinger, *Aliens and Congressional Districting*, p. 21-26. See also: U.S. Congress. Senate. Committee on Governmental Affairs. Subcommittee on Energy, Nuclear Proliferation, and Government Processes. *Enumeration of Undocumented Aliens in the Decennial Census*. Hearing, 99th Cong., 1st Sess., Sept. 18, 1985, p. 33-52. Testimony of John Noonan.

⁹ Passel, Jeffrey S. and Karen A. Woodrow. *Geographic Distribution of Undocumented Immigrants: Estimates of Undocumented Aliens Counted in the 1980 Census by State*. *International Migration Review*, v. 18, no. 3, Fall 1984. (This article was originally a paper presented at the 1984 annual meeting of the Population Association of America. The paper was not an official Census Bureau document.)

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tables are included showing which individual States might be expected to gain or lose, the only supportable conclusion that can be drawn from the tables is that excluding illegal aliens from the apportionment population might well make a difference in apportionment.¹⁰ Judgments on which individual States might be affected would be speculative at this time, however.

COUNTING ILLEGAL ALIENS IS NOT A NEW PROBLEM

The illegal immigration problem is sometimes cast as a mid- to late-twentieth-century phenomenon. Yet, the effort in 1929 to require the Census Bureau to count both the legal and illegal alien population produced debate showing that this matter was of concern to the Congress at a period when illegal immigration was probably not as large a component of total immigration as it has been in the 1970s and 1980s. The debate from Sen. Hugo Black's failed effort¹¹ to amend an automatic reapportionment bill to require the Census Bureau to enumerate aliens¹² illustrates the depth of feeling about illegal immigration at the time, and presages many of the concerns raised today about the Census Bureau's accounting of illegal aliens.

In the 1929 debate, proponents of requiring the Census Bureau to "include an enumeration of aliens lawfully in the United States and of aliens unlawfully in the United States"¹³ argued:

¹⁰ It is theoretically possible for so few illegals to be counted in 1990 that no seats would shift as the result of an adjustment.

¹¹ The amendment lost by a vote of 24 yeas to 56 nays. (Congressional Record, v. 71, May 28, 1929, p. 2083.)

¹² S. 312, 71st Cong., 1st Sess.

¹³ Congressional Record, v. 71, May 28, 1929, p. 2078.

It certainly cannot be said that the United States should not know how many aliens are unlawfully in the country.¹⁴

The aliens are here illegally, taking jobs of American citizens living under American standards, and whenever an effort is made to pass legislation for the purpose of getting information on this subject some argument is advanced about the impossibility or the unconstitutionality of any effort to protect the present American citizenship from a surplus of foreigners.¹⁵

One of the ways to find out whether or not a man is unlawfully in the country is to ask him when he came, how he came, and where he came from. Another way is to find out whether or not he was born in this country.¹⁶

Why could not the census enumerator ask these men at what port of entry they came in, and then we could communicate with the port and see if their names were on the record?¹⁷

There is nothing strange about the amendment and nothing revolutionary. It is merely a proposition suggesting that we utilize the machinery which is at hand to get as much information as we can to determine the facts with reference to the entrance of immigrants into the country.¹⁸

14 Ibid., Remarks of Sen. Hugo L. Black.

15 Ibid., p. 2080.

16 Ibid., p. 2078.

17 Ibid., Remarks of Sen. James T. Heflin, p. 2079.

18 Ibid., Remarks of Sen. Black, p. 2081.

Opponents of the measure to require the Census Bureau to enumerate illegal (and legal) aliens argued:

I hope he [Sen. Black] will point out how a census would be taken of the aliens unlawfully in this country--how they could be tracked down and enumerated. ¹⁹

Anyone coming into the country illegally would have to lie or sneak in and if he lied his way in, does the Senator think the answers we would get in these statistics would justify the expense and trouble that would have to be entailed to obtain the information? If a man is going to steal his way into the country, if he gets here illegally, certainly anything that comes from him should be taken with a grain of salt, and the information so obtained would be worthless. ²⁰

I would like to suggest to the Senator that if an alien is here unlawfully, what we really want is not an enumerator but a policeman to arrest him. . . . It is not the business of an enumerator to look after violators of the law. ²¹

I am very sure that everybody would assent to the proposition that it would be exceedingly advantageous to know about how many people there are in this country who are illegally here; but how could a census of them be taken by anyone? ²²

The Senator from Alabama has properly called attention to, and during this whole debate repeated comment has been made about, the large number of persons who have entered this country illegally. Personally I think the figures have been exaggerated, though I think it is deplorable that there are so many immigrants smuggled into the country. ²³

Many of the points made by these Senators six decades ago are being made in the current debate about counting illegal aliens in the census and including them in the apportionment population.

19 Ibid., Remarks of Sen. Millard E. Tydings, p. 2078.

20 Ibid., p. 2079.

21 Ibid., Remarks of Sen. Harry B. Hawes, p. 2079.

22 Ibid., Remarks of Sen. Thomas J. Walsh, p. 2080.

23 Ibid., Remarks of Sen. David I. Walsh, p. 2082.

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The next two sections describe and evaluate a method for producing State-by-State estimates of the number of illegals counted in the census ²⁴ (in the following example, the 1980 census) when the census questionnaire has not identified them as illegals. The method is from an independent study by two Census Bureau employees, Jeffrey S. Passel and Karen A. Woodrow. It would have been as germane to the 1929 discussion as it is to the present report.

METHOD USED TO ESTIMATE ILLEGAL ALIENS COUNTED IN THE 1980 CENSUS

Passel and Woodrow's study is an application at the State (and the District of Columbia) level of a residual (subtraction) method used earlier by Robert Warren and Passel at the national level to estimate the number of illegal aliens counted in the 1980 census. Warren and Passel's procedure, which is described in subsequent paragraphs, can be summarized as follows: the estimated number of aliens residing legally in this country at the census date (based on adjusted alien registration data from the Immigration and Naturalization Service [INS]) was subtracted from the adjusted total number of aliens (legal and illegal) included in the 1980 census, and the difference was assumed to represent illegal aliens. Warren and Passel made separate computations--by age, sex, country of birth, and period of entry into the United States--for aliens from 40 countries or areas. ²⁵

²⁴ If illegals are to be excluded from the population count used for apportionment, the important point is how many illegals are included in the census, not how many there are in the United States.

²⁵ Passel and Woodrow, Geographic Distribution of Undocumented Immigrants, p. 642. Warren, Robert and Jeffrey S. Passel. A Count of the
(continued...)

Preferably, both sets of data necessary to obtain the number of illegal aliens counted in the 1980 census would have come from a single source--the census. In such a case, the number of illegal aliens would have been obtained by subtracting the census count of legal aliens from the count of all aliens. This approach was impossible, however, because aliens' legal or illegal status could not be ascertained from the census data.²⁵ Thus, an independent estimate of legal aliens (from INS, rather than census, data) had to be substituted for the census count of legal aliens, with the possibility of a less-than-perfect match between the estimate and the actual census count of this group.

1980 Census Data

The 1980 census long-form questionnaire, which was sent to approximately a fifth of the U.S. population and included questions about country of birth, citizenship of foreign-born persons, and year of immigration to the United States, was the source of census data on the alien population.

Warren and Passel modified the census count of aliens to correct, insofar as possible, errors in the data due to erroneous responses or nonresponses to the above questions--errors that, if uncorrected, would have distorted the estimate of illegal aliens. Considerable misreporting of citizenship was

²⁵ (...continued)

Uncountable: Estimates of Undocumented Aliens Counted in the 1980 United States Census. *Demography*, v. 24, no. 3, August 1987. p. 376. (This article was originally a paper presented at the 1983 annual meeting of the Population Association of America. The paper was not an official Census Bureau document.)

²⁶ Warren and Passel, *A Count of the Uncountable*, p. 377.

found, through examination of discrepancies between 1980 census data and INS data on naturalized citizens. Respondents who misreported their citizenship (that is, reported themselves as naturalized citizens when they really were aliens or had been born abroad to American parents) were reclassified, as were foreign-born respondents who misreported their nativity (that is, reported themselves as native born). ²⁷

The test for misreporting of nativity involved comparison of estimated survivors (from 1970 to 1980) of the native-born population, based on 1970 census data, with the native-born population counted in the 1980 census, to ascertain whether the number of native born in 1980 exceeded the expected (estimated) number. This comparison did not show appreciable misreporting of nativity by aliens from all countries or areas of birth, but comparisons generally could not be made for aliens from individual countries or areas. ²⁸

Foreign-born respondents who did not report their countries of birth "were distributed to specific countries of birth on a pro rata basis within each state and within age, sex, period of entry, and citizenship category." ²⁹

Alien Registration Data

The INS Alien Registration Program, until its cessation after January 1981, required eight categories of legal aliens to file form I-53 annually

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid., p. 377.

with the INS. ³⁰ This form provided Warren and Passel with data on legally resident aliens (a combination of four alien categories), by age, sex, country of birth, period of entry into the United States, immigration status, and State of residence, for January 1980 (the closest possible date to the census). ³¹

The authors noted that, before their research, I-53 data never had been systematically evaluated to determine, for example, the extent to which they were incomplete. ³² Because underreporting by aliens in the 1980 I-53 data would have led to overestimates of the illegal alien population included in the 1980 census (the result of subtracting too few legal aliens from the modified total alien count), Warren and Passel adjusted the 1980 I-53 data for what they estimated to be an 11.1 percent underregistration by aliens from all countries and 5 percent to 17 percent underreporting by aliens from individual countries. ³³

³⁰ National Academy of Sciences. Panel on Immigration Statistics. Immigration Statistics: A Story of Neglect. Washington, National Academy Press, 1985. p. 65, 173.

³¹ National Academy of Sciences, Immigration Statistics, p. 65-66, 173. Warren and Passel, A Count of the Uncountable, p. 377, 382.

³² Incompleteness of the I-53 data, not overregistration, is the concern raised by Warren and Passel. In 1980, there were 5,381,107 I-53 registrants, compared with 6,969,431 aliens counted in the census, a difference of 1,588,324 persons. In 1970, however, the number of I-53 registrants (4,247,377) exceeded the number of aliens counted in the census (3,541,550) by 705,827 persons. (U.S. Bureau of the Census. 1970 Census of Population. Vol. 1, Characteristics of the Population. Part 1, United States Summary. Sec. 2. Washington, U.S. Govt. Print. Off., 1973. p. 1-600. 1980 Census of Population. Vol. 1, Characteristics of the Population. Chapt. C, General Social and Economic Characteristics. Part 1, United States Summary. PC80-1-C1. Washington, U.S. Govt. Print. Off., 1983. p. I-68. U.S. Immigration and Naturalization Service. 1980 Statistical Yearbook of the Immigration and Naturalization Service. Washington, U.S. Govt. Print. Off., n.d. p. 42.)

³³ Warren and Passel, A Count of the Uncountable, p. 382. The authors describe their method of adjustment for underregistration as being "based on a demographic accounting equation using tabulated and estimator figures for each (continued...)"

To approximate the size of the legally resident alien population on the census date, April 1, 1980, the authors adjusted the data further by adding an estimate of net legal immigration from January to April 1.³⁴ They arrived at an estimate of 2,057,000 illegal aliens included in the census.³⁵

State-Level Estimates

To derive State-level estimates of illegal aliens counted in the 1980 census, Passel and Woodrow applied the same residual method that Warren and Passel used at the national level, but desegregated the two data sets on aliens by State of residence, as well as by age, sex, country of birth, and period of entry into the United States; they also made additional necessary adjustments of the data. Corrections for misreporting of citizenship and nativity in the 1980 census data were extended to the State level by "adjusting pro rata across all states to the corrected national total [of foreign born] for each specific age, sex, country of birth, period of entry and citizenship category."³⁶

³³ (...continued)
component of change in the alien population--immigration, emigration, mortality, and naturalization--for each of the 40 areas for 1965-1980."

³⁴ Ibid.

³⁵ Ibid., p. 380.

³⁶ Passel and Woodrow, *Geographic Distribution of Undocumented Immigrants*, p. 646, 648.

EVALUATION OF THE METHOD AND THE STATE-LEVEL ESTIMATESThe Method

In the paragraph quoted below, Passel and Woodrow offer some caveats about their and Warren and Passel's research. Importantly, the validity of the national- and State-level estimates depends on the accuracy of the assumptions made at each stage of the estimating process; furthermore, any assumption entails some risk of error, though the risk diminishes when the assumption is sound.

The validity of the estimates of undocumented aliens counted in the census necessarily depends on a number of factors, including the accuracy of the estimates of legally resident aliens; the validity of the various assumptions used to modify the 1980 census data; the assumptions for allocation of estimates to the state level; and the census coverage of legally resident aliens. The utility of the estimates for generalizing about undocumented aliens depends further on the coverage of this group in the 1980 census. The estimates presented here should generally be regarded as lower bounds on the numbers of undocumented aliens in each state. . . . the national estimates were designed to provide a firm lower bound; for states, the greater number of assumptions required weaken this firm nature of the bound, but probably not by very much.³⁷

Kenneth Hill, a member of the Panel on Immigration Statistics of the National Academy of Sciences (NAS), summarized his evaluation of Warren and Passel's study as follows:

Warren and Passel's analysis clearly establishes that a substantial number of illegal aliens were included in the 1980 census population but does not establish the precise number because of the nature of the adjustments made to the underlying data.³⁸

³⁷ Ibid., p. 666.

³⁸ National Academy of Sciences, Immigration Statistics, p. 238.

Hill found these adjustments to be "numerous and sometimes substantial," and, in his opinion, the estimate of illegals counted in the census is "quite sensitive" to them. ³⁹

The first adjustment of concern to Hill is the one regarding misreported citizenship, which is

based on comparisons of the number of naturalizations by country of birth and year of immigration from INS data, with some small allowance for emigration and mortality, and numbers of naturalized citizens by country of birth and period of entry from the census. If the latter exceeded the former, the balance was taken as representing false claimants to naturalized citizenship. ⁴⁰

Hill's concern arises from the fact that "the total number of illegals would be directly affected by incorrect allowance for mortality and emigration of naturalized citizens and by any omission of naturalizations from INS data." ⁴¹ If such incorrect estimates and omissions had occurred, they would have resulted in shifting the wrong number of persons from the naturalized citizen category into the alien category in the census data, thus distorting the adjusted total number of aliens counted in the census and, therefore (because the estimate of illegals counted in the census equals the total alien count minus the estimate of legal aliens), the estimate of illegals included in the census.

Second, the estimated coverage of the INS I-53 data has a wide "margin of error" (due to possible underregistration or overregistration by aliens), which

³⁹ Ibid., p. 236-237.

⁴⁰ Ibid., p. 237.

⁴¹ Ibid.

could have affected the estimate of illegals by plus or minus at least half a million persons. ⁴²

Third, while the adjusted I-53 data estimate the legally resident alien population on April 1, 1980, the population really needed (but impossible to extract from the census data) for comparison with the census count of all aliens is that of legally resident aliens included in the census. The necessary substitution of adjusted I-53 data for the census count of legally resident aliens means that any census undercount of this group reduced the estimate of illegals by the same amount as the undercount, and any overcount inflated the estimate correspondingly. ⁴³ (According to Warren and Passel, a census undercount of legally resident aliens was more likely than an overcount.) ⁴⁴

The State-Level Estimates

Table 1, which gives Passel and Woodrow's State-level estimates of illegal aliens counted in the 1980 census and of legally resident aliens, and

⁴² Ibid.

⁴³ Ibid., p. 237-238. This point can be clarified by an example using hypothetical numbers: if 2,000 total aliens (1,500 legal plus 500 illegal) were counted in the 1980 census, and if 1,800 INS I-53 registrants were substituted for the census count of legal aliens (because the census does not distinguish between legal and illegal aliens), then the estimate of illegal aliens would equal 200 (2,000 - 1,800 = 200). If, however, the census had missed 300 legal aliens, and the "true" number of total aliens should have been 2,300 instead of 2,000, then the estimate of illegal aliens should have been 500 (2,300 - 1,800 = 500). Thus, illegal aliens would have been underestimated by 300 (500 - 200 = 300).

⁴⁴ Warren and Passel, *A Count of the Uncountable*, p. 387.

Table 2, showing percentages derived from Table 1, should be read with the preceding qualifications in mind.

The numerical distribution of illegals seems credible to the extent that it approximates the distribution of legal aliens.⁴⁵ States with more of one group tend to have more of the other, and vice versa, as shown in the rankings of States by estimated numbers of alien residents (Table 1). California, New York, and Texas rank first, second, and third, respectively, in numbers of legal and illegal aliens. Florida has the fourth-largest number of legal aliens and the fifth-largest number of illegals; Illinois has the reverse of these rankings.

Passel and Woodrow's study shows both legal and illegal aliens to be geographically concentrated, though concentration is greater among illegals.

⁴⁵ In the words of two authorities on immigration:

INS and other experts in the field agree, and there are some INS and Visa Office data to support the claim, that illegals are no longer almost exclusively a phenomenon of southwest agriculture, but are increasingly an urban phenomenon, both within and without the Southwest. We suggest that illegals are likely to cluster in the nation in the same manner as legal immigrants. In particular, EWIs [persons who enter the United States without official inspection] crossing the southwest border (who are predominantly but not exclusively Mexican illegals) increasingly appear to migrate to metropolitan areas in that region or to the industrial centers of the Mid-West, as legal Mexican immigrants have historically tended to do. In addition, as immigrants have done since the turn of the century and as immigrants do today, increasing numbers of illegals from other nations in the Western or the Eastern Hemisphere . . . cluster in major metropolitan areas in the nation, especially in its principal ports of entry along both coasts, where the supportive ethnic communities they need and the employment opportunities for low-skilled workers they seek, generally coincide. (North, David S. and Marion F. Houston. *The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study*. Washington, New TransCentury Foundation, 1976. p. S-16.)

The preceding five States together account for two-thirds of the estimated legal aliens and four-fifths of the estimated illegals nationwide, compared with a third of the total U.S. population in 1980 (Table 2). California alone has half of the illegal alien population, but 28.2 percent of legal aliens, a difference partly attributable to the much greater share of Mexicans among illegal than among legal aliens (55.1 percent versus 22.2 percent) and the even higher proportion of illegal than of legal aliens from Mexico (67.5 percent versus 51.5 percent) who have been drawn to California.⁴⁶

Less amenable to explanation are estimates in Table 1 that show relatively few or no illegal aliens in several States where at least some illegals might be expected to live: border States, States with large numbers of legal aliens, and States located near other States where illegal aliens are concentrated. Passel and Woodrow estimate there to be there are no illegals in Maine or Montana, though these border States are among the likely points of illegal entry into the United States from Canada,⁴⁷ and, thus, might be expected to have some illegal residents. In contrast, North Dakota, a border State less populous than either Maine or Montana, has 4,000 aliens, 1,000 of whom are illegal. Hawaii, with a relatively high rank (14th) in number of legal aliens,

⁴⁶ Passel and Woodrow, *Geographic Distribution of Undocumented Immigrants*, p. 652-653, 655, 668.

⁴⁷ Exactly how much illegal immigration occurs across the Canadian border is unknown. It is known, however, that "most of INS law enforcement resources [are allocated] to the Border Patrol at the Mexican border." (North and Houstoun, *The Characteristics and Role of Illegal Aliens in the U.S. Labor Market*, p. 49.) For this reason, illegal entry from Canada is less likely to be detected and reported than is illegal entry from Mexico. It is also known that in FY 1987, the INS apprehended 12,906 deportable aliens along the Canadian border, compared with 1,151,125 along the Mexican border. (Telephone conversation May 26, 1988, with Christine Davidson, Statistician, Statistical Analysis Branch, Immigration and Naturalization Service.)

shows no illegals. Pennsylvania, ranked ninth in number of legal aliens, is 25th in number of illegals, while the neighboring States of New York and New Jersey are second and sixth, respectively, in numbers of legal and illegal aliens. Connecticut, another State contiguous with New York, ranks 10th in legal aliens, but 32nd in illegals. The neighboring States of Michigan and Illinois have roughly comparable rankings on legal aliens (eighth and fifth, respectively), but widely divergent rankings on illegals (21st and fourth, respectively). It is uncertain whether such inconsistencies signify imprecise estimates at the sub-national geographical level, gaps in the census count of illegals, or any deficiencies at all.

Table 1. Passell and Woodrow Estimates of Illegal Aliens Included in the 1980 Census And of Legal Aliens, by State

	1980 Census apportionment population	Aliens				
		Illegal	Rank*	Legal	Rank*	Total Rank*
Alabama	3,890,061	5,000	30	11,000	35	16,000 35
Alaska	400,481	1,000	40	6,000	43	7,000 43
Arizona	2,717,866	25,000	9	75,000	13	100,000 11
Arkansas	2,285,513	3,000	37	6,000	42	9,000 42
California	23,668,562	1,024,000	1	1,520,000	1	2,544,000 1
Colorado	2,888,834	19,000	11	38,000	18	57,000 17
Connecticut	3,107,576	4,000	32	90,000	10	94,000 14
Delaware	595,225	1,000	41	6,000	44	7,000 44
Florida	9,739,992	80,000	5	427,000	4	507,000 4
Georgia	5,464,265	12,000	15	30,000	23	42,000 20
Hawaii	965,000	0	45	69,000	14	69,000 16
Idaho	943,935	5,000	31	7,000	40	12,000 37
Illinois	11,418,461	135,000	4	306,000	5	441,000 5
Indiana	5,490,179	8,000	22	33,000	21	41,000 22
Iowa	2,913,387	2,000	39	17,000	31	19,000 34
Kansas	2,363,208	8,000	24	19,000	30	27,000 30
Kentucky	3,661,433	4,000	33	11,000	36	15,000 36
Louisiana	4,203,972	7,000	26	39,000	17	46,000 19
Maine	1,124,660	0	45	10,000	38	10,000 41
Maryland	4,216,446	32,000	8	66,000	15	98,000 12

* Among States in descending order.

Table 1. Passel and Woodrow Estimates of Illegal Aliens Included in the 1980 Census And of Legal Aliens, by State--Continued

	1980 Census apportionment population	Aliens				
		Illegal	Rank*	Legal	Rank*	Total
Massachusetts	5,737,037	17,000	12	174,000	7	191,000
Michigan	9,258,344	8,000	21	123,000	8	131,000
Minnesota	4,077,148	9,000	18	32,000	22	41,000
Mississippi	2,520,638	4,000	35	6,000	41	10,000
Missouri	4,917,444	7,000	27	25,000	26	32,000
Montana	786,690	0	45	4,000	47	4,000
Nebraska	1,570,006	3,000	36	8,000	39	11,000
Nevada	799,184	7,000	28	23,000	27	30,000
New Hampshire	920,610	0	45	10,000	37	10,000
New Jersey	7,364,158	37,000	6	281,000	63	18,000
New Mexico	1,299,968	13,000	14	22,000	28	35,000
New York	17,557,288	234,000	2	832,000	2	1,066,000
North Carolina	5,874,429	9,000	19	26,000	25	35,000
North Dakota	652,695	1,000	44	3,000	49	4,000
Ohio	10,797,419	10,000	17	76,000	12	86,000
Oklahoma	3,025,266	11,000	16	22,000	29	33,000
Oregon	2,632,663	15,000	13	35,000	19	50,000
Pennsylvania	11,866,728	7,000	25	107,000	91	14,000
Rhode Island	947,154	2,000	38	35,000	20	37,000
South Carolina	3,119,208	4,000	34	15,000	34	19,000

* Among States in descending order.

Table 1. Passel and Woodrow Estimates of Illegal Aliens Included in the 1980 Census And of Legal Aliens, by State--Continued

1980 Census apportionment population		Aliens					
		Illegal	Rank*	Legal	Rank*	Total	Rank*
South Dakota ^a	690,178	0	45	2,000	50	2,000	50
Tennessee	4,590,750	6,000	29	16,000	33	22,000	32
Texas	14,228,383	186,000	3	505,000	36	91,000	3
Utah	1,461,037	9,000	20	16,000	32	25,000	31
Vermont	511,456	0	45	2,000	46	5,000	46
Virginia	5,366,279	34,000	7	62,000	16	96,000	13
Washington	4,130,163	22,000	10	80,000	11	102,000	10
West Virginia	1,949,644	1,000	42	6,000	45	7,000	45
Wisconsin	4,705,335	8,000	23	30,000	24	38,000	23
Wyoming	470,816	1,000	43	3,000	48	4,000	47
United States	225,867,174	2,040,000**		5,370,000		7,410,000	

* Among States in descending order.

** Does not include the estimate of 14,000 illegals for the District of Columbia. Difference between the U.S. total and the total reported by Warren and Passel may be due to independent rounding of the State-level estimates.

SOURCES: The estimates of the legal and illegal alien populations are from Passel, Jeffrey S. and Karen A. Woodrow. Geographic Distribution of Undocumented Immigrants: Estimates of Undocumented Aliens Counted in the 1980 Census by State. International Migration Review, v. 18, no. 3, Fall 1984. The 1980 census apportionment population consists of figures submitted to the President on December 31, 1980, for transmission to the Congress, showing the number of persons residing in each State.

Table 2. Percentage Distribution of the Alien Population, by State, and Aliens Relative to Total State Population, 1980
(Passel and Woodrow Estimates)

Proportion of:									
	State pop- ulation estimated to be illegal aliens	Total State alien pop- ulation esti- mated to be illegal		Total State population estimated to be aliens (legal plus illegal)		Estimated total U.S. illegal alien popula- tion residing in State		Estimated total U.S. alien population (legal plus illegal) residing in State	
	Rank*	Rank*	Rank*	Rank*	Rank*	Rank*	Rank*	Rank*	Rank*
Alabama	.13 Z	37	31.25 Z	11	.41 Z	45	.25 Z	.22 Z	35
Alaska	.25	20	14.29	34	1.75	19	.05	.09	43
Arizona	.92	6	25.00	21	3.68	10	1.23	1.35	11
Arkansas	.13	34	33.33	9	.39	48	.15	.12	42
California	4.33	1	40.25	2	10.75	1	50.20	34.29	1
Colorado	.66	10	33.33	7	1.97	16	.93	.77	17
Connecticut	.13	36	4.26	44	3.02	12	.20	1.27	14
Delaware	.17	27	14.29	35	1.18	23	.05	.09	44
Florida	.82	8	15.78	32	5.21	4	3.92	6.83	4
Georgia	.22	22	28.57	15	.77	35	.59	.57	20
Hawaii	.00	45	.00	45	7.15	2	.00	.93	16
Idaho	.53	15	41.67	1	1.27	22	.25	.16	37
Illinois	1.18	4	30.61	12	3.86	8	6.62	5.94	5
Indiana	.15	32	19.51	31	.75	36	.39	.55	22
Iowa	.07	42	10.53	39	.65	38	.10	.26	34
Kansas	.34	18	29.63	14	1.14	24	.39	.36	30
Kentucky	.11	39	26.67	19	.41	46	.20	.31	36
Louisiana	.17	28	15.22	33	1.09	25	.34	.62	19
Maine	.00	48	.00	48	.89	31	.00	.13	40
Maryland	.76	9	32.65	10	2.32	15	1.57	1.32	12

* Among States in descending order.

Table 2. Percentage Distribution of the Alien Population, by State, and Aliens Relative to Total State Population, 1980 (Passel and Woodrow Estimates)--Continued

Proportion of:									
State pop- ulation estimated to be illegal aliens	Total State alien pop- ulation esti- mated to be illegal		Total State population estimated to be aliens (legal plus illegal)		Estimated total U.S. illegal alien popula- tion residing in State		Estimated total U.S. alien population (legal plus illegal) residing in State		Rank*
	Rank*		Rank*		Rank*		Rank*		
Massachusetts	.30	19	8.90	40	3.33	11	.83	12	7
Michigan	.09	41	6.11	42	1.41	21	.39	23	9
Minnesota	.22	21	21.95	26	1.01	28	.84	18	21
Mississippi	.16	29	40.00	3	.40	47	.20	34	39
Missouri	.14	33	21.88	27	.65	39	.34	26	28
Montana	.00	4	.00	49	.51	43	.00	45	49
Nebraska	.19	25	27.27	16	.70	37	.15	37	38
Nevada	.88	7	23.33	24	3.75	9	.34	27	29
New Hampshire	.00	45	.00	46	1.09	27	.00	45	41
New Jersey	.50	16	11.64	37	4.32	6	1.81	6	6
New Mexico	1.00	5	37.14	4	2.69	13	.64	14	26
New York	1.33	2	21.95	25	6.07	3	11.47	2	2
North Carolina	.15	31	25.71	20	.60	42	.44	19	26
North Dakota	.15	30	25.00	23	.61	40	.05	42	47
Ohio	.09	40	11.63	38	.80	34	.49	17	15
Oklahoma	.3	1	33.33	8	1.09	26	.54	16	27
Oregon	.57	13	30.00	13	1.90	17	.74	13	18
Pennsylvania	.06	43	6.14	41	.96	30	.34	28	9
Rhode Island	.21	24	5.41	43	3.91	7	.10	39	24
South Carolina	.13	36	21.05	30	.61	41	.20	35	33

* Among States in descending order.

Table 2. Percentage Distribution of the Alien Population, by State, and Aliens Relative to Total State Population, 1980 (Passel and Woodrow Estimates)--Continued

Proportion of:									
State pop- ulation estimated to be illegal aliens	Rank*	Total State alien pop- ulation esti- mated to be illegal	Rank*	Total State population estimated to be aliens (legal plus illegal)	Rank*	Estimated total U.S. illegal alien popula- tion residing in State	Rank*	Estimated total U.S. alien population (legal plus illegal) residing in State	Rank*
South Dakota	.00 Z	50	.00 Z	50	.29 Z	50	.00 Z	.03 Z	50
Tennessee	.13	35	27.27	17	.48	45	.29	.30	32
Texas	1.31	3	26.92	18	4.06	5	9.12	9.32	3
Utah	.62	12	36.00	5	1.71	20	.44	.34	31
Vermont	.00	47	.00	47	.98	29	.00	.07	47
Virginia	.64	11	35.42	6	1.80	18	1.67	1.29	13
Washington	.53	14	21.57	27	2.47	14	1.08	1.38	10
West Virginia	.05	44	14.29	36	.36	49	.05	.09	45
Wisconsin	.17	26	21.05	28	.81	33	.39	.51	23
Wyoming	.23	23	25.00	21	.85	32	.05	.05	48
United States	.90		27.50		3.28				

* Among States in descending order.

SOURCE: The populations used to calculate the proportions and rankings are from Table 1.

State-Level Estimates Compared with P.L. 99-603 Legalization Applicants

Another set of data on illegal aliens by State, obtained by the INS (as part of the implementation of P.L. 99-603, the Immigration Reform and Control Act of 1986), can be cross-checked against Passel and Woodrow's estimates of illegal aliens counted in the 1980 census. Insofar as the two data sets show similar percentage distributions of illegal aliens, the INS data lend credibility to Passel and Woodrow's estimates. Accordingly, Table 3 presents Passel and Woodrow's estimates (columns 1 and 2), together with the States of residence reported by aliens who have applied for legalization under P.L. 99-603.

The amnesty provision of the Act grants temporary resident status, with the possibility of eventual permanent resident status, to otherwise eligible aliens who can document that they have lived continuously in the United States in unlawful status since before January 1, 1982.⁴⁸ The amnesty period began May 5, 1987, and ended a year later.⁴⁹

Columns 3 through 5 of Table 3 refer to aliens applying for amnesty, while columns 6 through 8 show data on aliens seeking legalization (temporary

⁴⁸ Public Law 99-603, Sec. 201. (Adding Sec. 245A (g) to the Immigration and Nationality Act.)

⁴⁹ U.S. Library of Congress. Congressional Research Service. Immigration Issues and Legislation in the 100th Congress. Issue Brief No. IB87014, by Joyce Viallet, Mar. 7, 1988 (regularly updated). Washington, 1988. p. 5.

resident status, followed by permanent resident status if certain are met) under a provision in the Act for special agricultural workers. ⁵⁰

INS data on amnesty applicants are from form I-687; data on special agricultural workers are from form I-700. As of March 4, 1988, 1,343,100 aliens--1,041,100 in the I-687 category and 302,000 in the I-700 category--had applied for legalization. ⁵¹

The following discussion focuses on the I-687 applicants, who, besides being a much larger group than the I-700 aliens, are also, for two reasons, more likely to resemble the illegals in Passel and Woodrow's estimates.

First, the I-687 aliens are more heterogeneous than the I-700 applicants, as indicated by the demographic data collected by the INS on both groups. ⁵² The I-687s work in a wider range of occupations (as laborers, service workers, clerical workers, and skilled workers) than do the I-700s, who, by definition, are agricultural workers. The I-687s include substantial proportions of each sex; 54 percent are male, and 46 percent are female, while the I-700s are 83 percent male. The range of ages is greater for the I-687s than for the I-700s; 77 percent of the former are between 15 and 44 years old, compared with 90 percent of the latter.

(For comparison, 53 percent of the illegal aliens in Warren and Passel's and Passel and Woodrow's estimates are male; 71 percent are 15 to 44 years

⁵⁰ Public Law 99-603, Sec. 301. (Adding Sec. 210 (a) to the Immigration and Nationality Act.)

⁵¹ U.S. Immigration and Naturalization Service. Statistical Analysis Branch. Provisional Legalization Application Statistics, Mar. 4, 1988 (unpublished data). Washington, 1988. p. 2-3.

⁵² Ibid.

old.⁵³ The authors did not give an occupational breakdown of the illegals in their estimates. It is doubtful, however, that these illegals are predominantly agricultural workers, who--especially if illegal--tend to be migratory and, therefore, more easily missed by the census than are other workers, because migrants generally have no fixed addresses.)

Second, the I-687s are more likely than the I-700s to have been enumerated in the 1980 census because, unlike the I-700s, they must have been in the United States since before 1982; also, few of the I-687s appear to be migratory workers. Only 4.1 percent of them are engaged in farming, forestry, and fishing.⁵⁴

⁵³ Passel and Woodrow, *Geographic Distribution of Undocumented Immigrants*, p. 661. Warren and Passel, *A Count of the Uncountable*, p. 383.

⁵⁴ U.S. Immigration and Naturalization Service, *Provisional Legalization Application Statistics*, p. 19.

Table 3. Comparison of Passel and Woodrow's Illegal Alien Estimates with Immigration and Naturalization Service Legalization Applications

State	Passel & Percent of Woodrow's illegal nat. alien est. total			State I-687 applications			State I-700 applications			Total legalization applications (I-687+I-700)*		
				Total	Percent of nat. total estimate	Percent of P&W estimate	Total	Percent of nat. total estimate	Percent of P&W estimate	Total	Percent of nat. total estimate	Percent of P&W estimate
Alabama	5,000	.2		300	0	6.0	300	.1	6.0	700	.1	14.0
Alaska	1,000	0		200	0	20.0	0	0	0	200	0	20.0
Arizona	25,000	1.2		17,300	1.7	69.2	12,600	4.2	50.4	29,900	2.2	119.6
Arkansas	3,000	.1		400	0	13.3	300	.1	10.0	700	.1	23.3
California	1,024,000	50.2		597,800	57.4	58.4	142,800	47.3	13.9	740,700	55.1	72.3
Colorado	19,000	.9		6,800	.7	35.8	3,400	1.1	17.9	10,200	.8	53.7
Connecticut	4,000	.2		1,600	.2	40.0	200	.1	5.0	1,800	.1	45.0
Delaware	1,000	0		100	0	10.0	200	.1	20.0	400	0	40.0
Florida	80,000	3.9		30,700	2.9	38.4	59,500	19.7	74.4	90,200	6.7	112.8
Georgia	12,000	.6		3,300	.3	27.5	2,200	.7	18.3	5,500	.4	45.8
Hawaii	0	0		800	.1	0	300	.1	0	1,100	.1	0
Idaho	5,000	.2		1,900	.2	38.0	4,100	1.4	82.0	6,000	.4	120.0
Illinois	135,000	6.6		71,400	6.9	52.9	2,100	.7	1.6	73,500	5.5	54.4
Indiana	8,000	.4		1,000	.1	12.5	300	.1	3.8	1,200	.1	15.0
Iowa	2,000	.1		400	0	20.0	100	0	5.0	500	0	25.0
Kansas	8,000	.4		2,400	.2	30.0	400	.1	5.0	2,800	.2	35.0
Kentucky	4,000	.2		200	0	5.0	100	0	2.5	300	0	7.5
Louisiana	7,000	.3		1,400	.1	20.0	300	.1	4.3	1,700	.1	24.3
Maine	0	0		0	0	0	0	0	0	100	0	0
Maryland	32,000	1.6		4,200	.4	13.1	700	.2	2.2	4,900	.4	15.3

*For each State, summing the number in the I-687 column with the number in the I-700 column may not yield the total reported in the total legalization applications column, because the INS rounded each number separately.

Table 3. Comparison of Passel and Woodrow's Illegal Alien Estimates with Immigration and Naturalization Service Legalization Applications--Continued

State	Passel & Percent of Woodrow's illegal alien est. total			State I-687 applications			State I-700 applications			Total legalization applications (I-687+I-700)*		
	alien est.	total	of nat.	Total	Percent of nat. total estimate	Percent of P&W estimate	Total	Percent of nat. total estimate	Percent of P&W estimate	Total	Percent of nat. total estimate	Percent of P&W estimate
Massachusetts	17,000	.8		4,800	.5	28.2	300	.1	1.8	5,100	.4	30.0
Michigan	8,000	.4		1,200	.1	15.0	1,000	.3	12.5	2,300	.2	28.8
Minnesota	9,000	.4		500	0	5.6	100	0	1.1	600	0	6.7
Mississippi	4,000	.2		200	0	5.0	100	0	2.5	300	0	7.5
Missouri	7,000	.3		800	.1	11.4	200	.1	2.9	1,000	.1	14.3
Montana	0	0		100	0	0	0	0	0	100	0	0
Nebraska	3,000	.1		700	.1	23.3	300	.1	10.0	1,000	.1	33.3
Nevada	7,000	.3		6,400	.6	91.4	600	.2	8.6	7,000	.5	100.0
New Hampshire	0	0		100	0	0	0	0	0	100	0	0
New Jersey	37,000	1.8		13,100	1.3	35.4	2,000	.7	5.4	15,100	1.1	40.8
New Mexico	13,000	.6		10,900	1.0	83.8	3,800	1.3	29.2	14,700	1.1	113.1
New York	234,000	11.5		57,800	5.6	24.7	12,700	4.2	5.4	70,500	5.2	30.1
North Carolina	9,000	.4		1,600	.2	17.8	5,000	1.7	55.6	6,500	.5	72.2
North Dakota	1,000	0		0	0	0	0	0	0	0	0	0
Ohio	10,000	.5		800	.1	8.0	400	.1	4.0	1,200	.1	12.0
Oklahoma	11,000	.5		7,700	.7	70.0	2,200	.7	20.0	9,900	.7	90.0
Oregon	15,000	.7		2,900	.3	19.3	8,800	2.9	58.7	11,600	.9	77.3
Pennsylvania	7,000	.3		1,500	.1	21.4	2,100	.7	30.0	3,600	.3	51.4
Rhode Island	2,000	.1		1,100	.1	55.0	0	0	0	1,100	.1	55.0
South Carolina	4,000	.2		500	0	12.5	800	.3	20.0	1,400	.1	35.0

*For each State, summing the number in the I-687 column with the number in the I-700 column may not yield the total reported in the total legalization applications column, because the INS rounded each number separately.

Table 3. Comparison of Passel and Woodrow's Illegal Alien Estimates with Immigration and Naturalization Service Legalization Applications--Continued

State	Passel & Woodrow's illegal alien est.			State I-687 applications			State I-700 applications			Total legalization applications (I-687+I-700)*		
	alien est.	total	Percent of nat.	Total	Percent of nat. total estimate	Percent of P&W estimate	Total	Percent of nat. total estimate	Percent of P&W estimate	Total	Percent of nat. total estimate	Percent of P&W estimate
South Dakota	0	0		100	0	0	0	0	0	100	0	0
Tennessee	6,000	.3		600	.1	10.0	200	.1	3.3	800	.1	13.3
Texas	186,000	9.1		163,100	15.7	87.7	16,000	5.3	8.6	179,100	13.3	96.3
Utah	9,000	.4		1,700	.2	18.9	1,600	.5	17.8	3,400	.3	37.8
Vermont	0	0		0	0	0	0	0	0	0	0	0
Virginia	34,000	1.7		5,100	.5	15.0	1,100	.4	3.2	6,200	.5	18.2
Washington	22,000	1.1		6,800	.7	30.9	12,100	4.0	55.0	18,900	1.4	85.9
West Virginia	1,000	0		100	0	10.0	100	0	10.0	200	0	20.0
Wisconsin	8,000	.4		1,900	.2	23.8	200	.1	2.5	2,100	.2	26.3
Wyoming	1,000	0		600	.1	60.0	100	0	10.0	700	.1	70.0
U.S. Total	2,040,000			1,041,100		51.0	302,000		14.8	1,343,100		65.8

*For each State, summing the number in the I-687 column with the number in the I-700 column may not yield the total reported in the total legalization applications column, because the INS rounded each number separately.

SOURCES: The estimates of the illegal alien populations are from: Passel, Jeffrey S. and Karen A. Woodrow. Geographic Distribution of Undocumented Immigrants: Estimates of Undocumented Aliens Counted in the 1980 Census by State. International Migration Review, v. 18, no. 3, Fall 1984.

The estimates of the legalization applications are from: U.S. Immigration and Naturalization Service. Statistical Analysis Branch. Provisional Legalization Application Statistics, Mar. 4, 1988 (unpublished data). Washington, 1988. Table 2, Estimated Legalization Applications (I-687 and I-700) by State of Residence.

In general, the percentage distribution of I-687 applicants by State closely resembles the distribution of illegal aliens derived by Passel and Woodrow and lends plausibility to their estimates (Table 3). The same five States with four-fifths of the illegals in Passel and Woodrow's estimates have 88.4 percent of the I-687 applicants. Though California and Florida are the only two of these States with identical rankings on their proportions of each group, the proportions themselves tend to be quite similar. California ranks first, with half of the illegals estimated by Passel and Woodrow and 57.4 percent of the I-687 aliens, while Florida, ranked fifth, has 3.9 percent and 2.9 percent, respectively, of each group. New York, second-ranked in its share of the illegals estimated by Passel and Woodrow (11.5 percent), ranks fourth in percentage of I-687 applicants (5.6 percent). Texas ranks third in Passel and Woodrow's estimates and second in I-687 aliens, with 9.1 percent and 15.7 percent, respectively, of each group. Illinois has the fourth-largest proportion of the illegals estimated by Passel and Woodrow (6.6 percent) and the third-largest proportion of I-687 applicants (6.9 percent).

The numerical distribution of I-687 applicants by State has several of the characteristics that were previously noted about Table 1; in other words, there are relatively few or no illegal aliens in several States where at least some illegals might be expected to live. This consistency, while only partial, gives additional credibility to Passel and Woodrow's estimates. Their data show no illegal aliens counted in the 1980 census in the border States of Maine and Montana, yet 1,000 illegals enumerated in North Dakota. By comparison, there are, thus far in the amnesty program, no I-687 applications for Maine, 100 for Montana, and none for North Dakota. The numbers, like Passel and

Woodrow's estimates, suggest that none of these border States has a large illegal alien population. (Somewhat less convincing is Passel and Woodrow's estimate of no illegals in Hawaii, because 800 I-687 applications have been reported for this State.) In Passel and Woodrow's estimates, Pennsylvania and Connecticut have low numbers of illegals, relative to the numbers in New York and New Jersey, just as Michigan has a low number in comparison with the neighboring State of Illinois. The same pattern is evident with respect to I-687 applications. Table 3 shows considerable variation from State to State in I-687 applicants as a proportion of the illegal aliens estimated to have been counted in the 1980 census. The variation ranges from less than 10 percent for States like Alabama, Kentucky, Minnesota, Mississippi, and Ohio to more than 66 percent for Arizona, Nevada, New Mexico, Oklahoma, and Texas. These proportions should be viewed cautiously, however, since the numerators and denominators are from somewhat different populations. In other words, the population of illegals eligible for amnesty (to which I-687 applicants belong) is not identical to the population of illegals enumerated in 1980 (from which Passel and Woodrow's estimates are drawn). That is, some illegals counted in the census might have left the United States before 1982; some not here at the census date might have entered the country by the end of 1981; and others who were here, but not enumerated, in 1980 might be eligible for amnesty.

Table 3 also shows that the sum of I-687 and I-700 applicants in each State (column 9), when expressed as a percentage of the estimated census count of illegals in the State (column 11), exceeds 100 percent in Arizona, Florida, Idaho, and New Mexico. Whether these proportions indicate underestimates by Passel and Woodrow is uncertain, because, as is true of the I-687 aliens, the

I-700 applicants may include an unknown number of persons who were not enumerated in 1980.

CENSUS COUNT OF ILLEGALS VERSUS ACTUAL ILLEGAL ALIEN POPULATION

Even if the estimates by Warren and Passel and Passel and Woodrow fairly accurately represent the total number of illegal aliens counted in the 1980 census and the number counted in each State, how thoroughly the census counted the whole illegal alien population in 1980 remains open to question. Warren and Passel observed that their estimate of 2,057,000 illegals included in the 1980 census is probably a conservative one as to the actual number of illegals in the United States at the census date.⁵⁵ In other words, assuming that Warren and Passel's estimate is correct, at least 2,057,000 illegals were here then, but many more might have been here without being counted.

Information from some credible sources could be used to argue that the 1980 census counted at least half of the illegal alien population. The Panel on Immigration Statistics of the NAS reported in 1985 that empirically based estimates of this population range from 2,000,000 to 4,000,000,⁵⁶ indicating no greater than a 50 percent undercount of illegals in the last census. Immigration authority Charles Keely suggested that between half and two-thirds of the illegal alien population might have been enumerated in 1980.⁵⁷

⁵⁵ Warren and Passel, *A Count of the Uncountable*, p. 390.

⁵⁶ National Academy of Sciences, *Immigration Statistics*, p. 133.

⁵⁷ Warren and Passel, *A Count of the Uncountable*, p. 391.

Warren and Passel have expressed doubt that as many as 6,000,000 illegals were in the United States in 1980. A population this large would imply an undercount exceeding 65 percent, which seems:

. . . improbable in light of the characteristics of the undocumented aliens counted and of persons usually missed in the census. The undocumented population counted includes large proportions of women and children--groups usually counted well. Furthermore, over one-fourth of those counted must be reasonably well established, since they had been in the United States for more than 10 years in 1980; a group such as this should not have extraordinarily high undercount rates.⁵⁸

Other indications that the census might have enumerated much of the illegal alien population are, according to Warren and Passel: the Census Bureau's augmented efforts to improve coverage of groups who are difficult to count--efforts that, judging from the low estimated undercount (1 percent) of all native-born and foreign-born legal residents in 1980, were successful; evidence that the census covered most housing units; and the possibility that illegals, anticipating an eventual legalization program, might have participated in the census to establish proof of their U.S. residence in 1980.⁵⁹

On the other hand, an argument could be made that the census missed a sizable number of illegal aliens, either because they lacked sufficient English proficiency to answer the census questionnaire, or because they did not wish to fill out an official form of the U.S. government. Patrick C. Burns, Associate

⁵⁸ Ibid., p. 390-391.

⁵⁹ Ibid., p. 391.

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Director of the Federation for American Immigration Reform (FAIR) has written that:

. . . Spanish-language [census] forms were available only upon request, and it is doubtful whether recent arrivals from Mexico, Central and South America were literate enough or secure enough to take the trouble to be enumerated.⁶⁰

Moreover, illegals are not simply, as Warren and Passel conceded, difficult to enumerate (other groups, including the homeless, are also difficult to count). Illegals are also a clandestine population, many of whose members might have feared attracting governmental scrutiny if they completed and returned the 1980 census questionnaire, despite assurances that information collected by the Census Bureau is kept strictly confidential. Illegals who were enumerated to prove that they lived in the United States in 1980 might have been far outnumbered by those too apprehensive to be counted. In the words of the Panel on Immigration Statistics:

Estimating the size of this [illegal alien] population, and still more its characteristics, poses serious and special measurement problems, since the population itself is, for obvious reasons, anxious to avoid any unnecessary contact with officialdom.⁶¹

HOW ILLEGALS MIGHT AFFECT THE SIZE OF THE 1990 APPORTIONMENT POPULATION

There are many uncertainties to be confronted in trying to assess the possible impact of illegal aliens on the size of the 1990 apportionment population.

⁶⁰ Memorandum from Patrick C. Burns, Associate Director, Federation for American Immigration Reform, Sept.-Oct. 1986, p. 8-9.

⁶¹ National Academy of Sciences, Immigration Statistics, p. 204.

For example, if illegals were markedly undercounted in the 1980 census, and if efforts to improve coverage of this population (along with other difficult-to-enumerate groups) succeed dramatically in 1990, the apportionment population might include far more illegals in 1990 than a decade earlier. Such an occurrence could be particularly likely in the States where illegals are heavily concentrated, derive some security from living in large ethnic enclaves, and, therefore, might be least fearful of enumeration.

Alternatively, assuming that the 1980 census did not greatly undercount illegal aliens, enough of them may have entered the United States during the decade to figure importantly in the apportionment population of the States where they are clustered. According to Warren and Passel, 46 percent of all 2,057,000 illegals estimated to have been included in the 1980 census entered the country between 1975 and 1980, and another 28 percent entered from 1970 through 1974.⁶² The authors cautioned that their period-of-entry data should not be used to speculate about trends in the volume of illegal immigration, because the census obviously missed an unknown and perhaps large number of illegals who arrived in the United States at various times and left before 1980.⁶³ Nevertheless, illegal immigration appears to have been of considerable magnitude during the 1970s, especially in the second half of the decade, and it may have continued to be so throughout the 1980s, or at least until the Immigration Reform and Control Act of 1986 became law (P.L. 99-603). (Illegal immigration may or may not have been reduced significantly by this law.)

⁶² Warren and Passel, *A Count of the Uncountable*, p. 382.

⁶³ *Ibid.*

Patrick C. Burns of FAIR, in support of his allegation that illegal immigration is increasing, has made three points. First, INS Border Patrol apprehensions of illegal aliens increased by 1,600 percent from 1965 to 1986, while the Border Patrol itself grew by 75 percent. (A caveat about Border Patrol statistics is that they refer to apprehensions, not to individuals; for example, if the same person is caught five times, he or she is counted as five apprehensions. For this reason, trends in apprehensions are an imperfect indicator of illegal immigration trends, but they are an indicator nonetheless.) Second, the average time per apprehension decreased from 13.4 hours in 1970 to 4.8 hours in 1983, presumably (in Burns's opinion) not because of improved Border Patrol efficiency, but because of more attempted illegal entries. Third, the admission of nonimmigrant aliens has more than doubled since 1970. If, as Burns has assumed, the percentage of these aliens who stay illegally in the United States after their visas expire has not decreased, the number of such illegals has grown.⁶⁴ Thus, even if the estimate of 2,057,000 illegals included in the 1980 census closely approximates the number who were in the country at the census date, many more illegals might have come here since then and be here in 1990, despite reduction of this population through emigration. Finally, it is uncertain what effect P.L. 99-603 will have on the number of illegals included in the 1990 apportionment population. Some illegals will receive legal status under the previously mentioned amnesty provision of the law; presumably, they will then have no reason to fear enumeration, but they also, of course, no longer will be part of the illegal

⁶⁴ Memorandum from Patrick C. Burns, Federation for American Immigration Reform, p. 4-5.

population. Others may leave the country, or prospective illegal immigrants may be discouraged from coming here, because of the employer sanctions provision of P.L. 99-603,⁶⁵ which was designed to undercut a major incentive--the lure of jobs in the United States--for continued illegal immigration. Still other illegals may remain here in illegal status, and an additional number may enter the country notwithstanding the new law.

THE TECHNICAL IMPLICATIONS OF EXCLUDING ILLEGALS FROM THE 1990 APPORTIONMENT POPULATION

The issue addressed in this report is not what proportion of the illegal alien population the 1980 census enumerated; although relevant, neither is it the number of illegals the 1990 apportionment count might include. It is, instead, whether existing policy should be changed to require the exclusion of illegals from the 1990 census count used for apportionment.

This policy change might be made by statute or might necessitate a constitutional amendment. The legal implications of such a change are discussed in other, previously cited, CRS reports.⁶⁶ The purpose in this section is to evaluate the technical aspects of a requirement to exclude illegals from the apportionment population.

⁶⁵ This provision "prohibits the employment, or recruitment or referral for a fee, of aliens known to be unauthorized to accept employment in the United States" The provision applies "only to aliens hired, recruited, or referred on or after . . . the date of enactment," November 6, 1986. (U.S. Library of Congress, Immigration Issues, p. 3-4.)

⁶⁶ See footnote 4.

If adopted, the new policy could be implemented in one of three ways: by not counting illegal aliens in the census; by counting them, but devising a means to identify them in the census and then exclude them from the apportionment population; or by counting them without identifying them, but finding a way to exclude them from the apportionment population.

(It should be pointed out that if illegal aliens were excluded from the State population counts used for apportionment and were not similarly excluded from the sub-State populations used for within-State redistricting, concentrations of illegal aliens within a State would have an impact on the redrawing of congressional districts. If a State's apportionment population differed greatly from the State population figure used for redistricting, disparities might result, raising issues of fairness.)

The Burns-FAIR Proposal: Not to Count Illegal Aliens

The first exclusion method, proposed by Patrick C. Burns of FAIR, would add an instruction to the short-form census questionnaire, which is intended for completion by all U.S. households. The new instruction would direct the person filling out the questionnaire to list as members of the household (that is, to enumerate) only citizens and any legal aliens who live there. (The long-form questionnaire, sent to a sample of U.S. households, would be unchanged under this proposal.) ⁶⁷

⁶⁷ Bean, Frank D. and Rodolfo O. de la Garza. *Illegal Aliens and 1990 Census Counts*. Texas Population Research Center Papers, no. 8.019, 1986. p. 9. Memorandum from Patrick C. Burns, Federation for American Immigration Reform, p. i.

Burns's method has directness and simplicity in its favor. The illegal alien population would not have to be estimated from a separate data source (with the risk of error that estimation involves and with the possibility of delay in reporting the apportionment population to Congress), and then have to be subtracted from the apportionment population, because one additional instruction on the questionnaire would prevent illegals from being enumerated.

A disadvantage of this method is that the Census Bureau would need considerable time, little of which remains until the census date, and money to develop and test the instruction to omit illegal aliens from the short form.

Moreover, the first method would reverse the established census practice of counting all persons considered to be U.S. residents (a category that excludes foreign diplomatic personnel living in embassies and foreign tourists) and of not distinguishing between legal and illegal aliens.⁶⁸ Some authorities, at the Census Bureau and elsewhere, believe that changing the current practice could adversely affect census coverage and accuracy.⁶⁹ Among the reasons for concern are that: "the addition of any 100 percent item . . . [to the short-form questionnaire] reduces census coverage and accuracy"; an attempt to separate legal from illegal aliens "might easily be perceived as threatening to the entire foreign born population," resulting in increased nonresponse to the census by foreign-born persons; and an instruction that some

⁶⁸ Passel, Jeffrey S. and Karen A. Woodrow. The Judicial Basis for Enumeration of Undocumented Aliens in the 1980 Census and Implications for 1990. Paper presented at the 1984 annual meeting of the American Statistical Association. p. 1-2.

⁶⁹ Bean and De la Garza, Illegal Aliens and 1990 Census Counts, p. 14-15. Passel and Woodrow, The Judicial Basis for Enumeration of Undocumented Aliens, p. 3. U.S. Bureau of the Census. 1990 Census Residence Rules, Dec. 7, 1987 (unpublished fact sheet). Washington, 1987. p. 3.

persons not be enumerated might "invite non-compliance [with instructions to complete and return the census questionnaire] in general. . . ." ⁷⁰

Further, under the first method, illegals would be excluded not only from the population count used for apportionment, but also from the count used for every other purpose. Population size is one criterion for allocating between \$33 billion and \$50 billion annually in Federal grants to States and localities. ⁷¹ Therefore, improved census coverage of illegal aliens--not elimination of coverage--is considered important in areas where illegals are numerous, to give these areas the most accurate data possible on their residents, irrespective of their legal or illegal status. It is Burns's intention that illegals be excluded only from apportionment, not from other purposes for which census data are used. Therefore, Burns has recommended estimating the number of illegals from surveys conducted at or near the census date, then adding this number to the U.S. population count for nonapportionment purposes. ⁷²

Identification of Legal and Illegal Aliens on the Census Form

The second method would have the person completing the census questionnaire distinguish between any legal and illegal alien household members and note them as such.

⁷⁰ Bean and De la Garza, *Illegal Aliens and 1990 Census Counts*, p. 15.

⁷¹ Rich, Spencer. *Political Power and Money at Stake in Census Undercount Fight*. *Washington Post*, Jan. 12, 1988, p. A19.

⁷² Memorandum from Patrick C. Burns, *Federation for American Immigration Reform*, p. i.

Theoretically, this method would lead to the straightforward separation of legal from illegal aliens in the census data. Illegals could then be subtracted fairly easily from the apportionment population, but included in the population count for other purposes. Unlike the first and third methods, the second method would make estimates of the illegal alien population unnecessary.

However, the problem previously mentioned about developing and testing the altered census questionnaire under method one applies as well to the second method.

Also, noncompliance with the census under this method might well surpass that expected under method one. Respondents who feel apprehensive about an instruction to omit illegal alien household members from the census form presumably would be more fearful if instructed to note these persons. In the Census Bureau's opinion, an attempt to determine the legal or illegal status of U.S. residents would cause:

. . . both perceptual and operational problems that could jeopardize our ability to take the census. Asking about legal status could result in the misperception that the information we collect is used for enforcement. This could seriously threaten cooperation even among legal residents. The answers obtained from such an inquiry would be questionable at best. Indeed, many respondents simply would not be willing or able to answer honestly or accurately. We would be asking respondents to make a legal determination, a process that normally follows a judicial procedure.⁷³

Passel and Woodrow's Method: To Count Illegals Without Identifying Them

The third method could involve the application of the residual technique used by Passel and Woodrow to derive State-level estimates of illegal aliens

⁷³ U.S. Bureau of the Census, 1990 Census Residence Rules, p. 3.

counted in the 1980 census. The estimated number of aliens living legally in the United States at the census date would be subtracted from the adjusted total number of aliens (legal and illegal) included in the 1990 census. The difference between these two numbers would be the estimate of illegal aliens.

An advantage of applying their method to exclude illegals from the apportionment population is that established census practice would remain unchanged; nor would illegal aliens have to be added to the U.S. population count for nonapportionment purposes.

However, Passel and Woodrow's technique lacks the directness and simplicity of the first and second methods. Producing the estimates in time to meet the statutory deadline for reporting the apportionment population to Congress is another potential problem with the third method.⁷⁴

A major problem is that the INS Alien Registration Program, the source of I-53 data on legally resident aliens, has not existed since 1981. Unless it is reinstated or an alternative program established, the method used by Passel and Woodrow would be inapplicable in 1990.⁷⁵

There is, moreover, "the possibility that . . . estimates [obtained by the residual method] would contain errors serious enough to affect the allocation of Congressional seats."⁷⁶ What matters with respect to Passel and Woodrow's technique is how closely the estimated number of illegals counted in the census would match the number of illegals actually counted, because this estimate is what would be used for an apportionment adjustment. If the

⁷⁴ U.S. Bureau of the Census, 1990 Census Residence Rules, p. 3.

⁷⁵ Warren and Passel, *A Count of the Uncountable*, p. 392.

⁷⁶ U.S. Bureau of the Census, 1990 Census Residence Rules, p. 3.

estimate for a State were to exceed the real count, the State's apportionment population would be reduced too much, and vice versa.

Another Application of the Third Method

A variation of the third method (a variation because it would add INS data to census data instead of subtracting one from the other) would involve two changes in current Census Bureau and INS practice. First, an item on citizenship would be added to the short-form census questionnaire: respondents would be asked if they are or are not U.S. citizens. (In 1980, the citizenship question appeared on the long form and was asked only of persons who reported that they were foreign born.) Second, a registration of all legal aliens, designed to be as complete as possible, would be conducted in January 1990. The apportionment population would then be determined by adding persons who answered "yes" to the short-form citizenship question and persons who registered with the INS (those who are in the categories that would be included in the census), plus the INS count of immigrants who entered the United States between January and the census date. In other words, the apportionment population would consist of U.S. citizens (either native-born or naturalized foreign-born citizens), plus legal aliens; illegal aliens would be excluded automatically, because they would belong to neither of these two categories.⁷⁷

Among the advantages of this variation on the third method are that it might provide valid data through a relatively uncomplicated procedure,

⁷⁷ This method was described by Robert Warren, Chief of the Statistical Analysis Branch, Immigration and Naturalization Service (INS), in a telephone conversation April 7, 1988, with one of the authors. The description does not, however, constitute an official statement by the INS or an INS endorsement of the method.

involving fewer assumptions than Passel and Woodrow's technique; it would provide timely data with good geographical detail; it would not require the identification in the census of legal and illegal aliens (as would method two); and it would not necessitate estimating and adding illegals to the U.S. population count for nonapportionment uses (as would the first method).

Nevertheless, like methods one and two, the variation on the third method would require an addition to the short-form questionnaire, with drawbacks that already have been discussed. Also, the decision to make this addition, along with plans for a registration of legal aliens in January 1990, would have to be made soon in order to allow time for the necessary preparations. The variation on method three presupposes strict compliance with the registration program and truthful answers to the short-form citizenship question; the foreign-born population would presumably find the latter less threatening than an instruction to omit illegal aliens from the census form (as in method one) or to identify legal and illegal aliens on the form (as in method two).

ILLUSTRATIVE APPORTIONMENTS, ADJUSTING FOR ILLEGAL ALIENS

This section reports the results of several trial apportionments using Passel and Woodrow's alien estimates to adjust the State apportionment populations. Using their data in such an exercise to determine the impact of excluding illegal aliens from the 1980 apportionment count is more defensible than trying to predict what effect excluding aliens from the 1990 census would have, because, regardless of the quality of the alien estimates, their impact can be shown had they been used to adjust the 1980 apportionment population.

Using these same data to predict the outcome for 1990 is problematical because of the many more uncertain assumptions that must be made.

The 1980 Apportionment

Table 4 summarizes trial apportionments based on the results of the 1980 Census. The table shows which States would have gained or lost seats if Passel and Woodrow's alien estimates had been subtracted from each State's population. Two scenarios are presented. The first is based on excluding illegals from the population used for apportionment. This results in California and New York each losing a seat, with Georgia and Indiana gaining seats. The second scenario subtracts all aliens, both legal and illegal, from the apportionment population. This results in the following differences from the actual seat allocations made based on the 1980 Census: California (-3), Florida (-1), New York (-2), Alabama (+1), Arkansas (+1), Georgia (+1), Indiana (+1), Missouri (+1), and North Carolina (+1).

The apportionment showing the impact of excluding all aliens from the apportionment population is included because, historically, the issue has been stated in this way. Although the proposals that are pending before the Congress at this writing only address the issue of illegal aliens, another proposal (either by statute or constitutional amendment) would be to exclude all aliens.

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Table 4. 1980 Apportionment Based on Various Assumptions About the Impact of Accounting for the Alien Estimates of Passel and Woodrow

State	1980 Apportionment	Seat gains or losses as a result of subtracting:	
		Illegal aliens	All aliens
Alabama	7		+1
Alaska	1		
Arizona	5		
Arkansas	4		+1
California	45	-1	-3
Colorado	6		
Connecticut	6		
Delaware	1		
Florida	19		-1
Georgia	10	+1	+1
Hawaii	2		
Idaho	2		
Illinois	22		
Indiana	10	+1	+1
Iowa	6		
Kansas	5		
Kentucky	7		
Louisiana	8		
Maine	2		
Maryland	8		
Massachusetts	11		
Michigan	18		
Minnesota	8		
Mississippi	5		
Missouri	9		+1

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Table 4. 1980 Apportionment Based on Various Assumptions About the Impact of Accounting for the Alien Estimates of Passel and Woodrow--Continued

State	1980 Apportionment	Seat gains or losses as a result of subtracting:	
		Illegal aliens	All aliens
Montana	2		
Nebraska	3		
Nevada	2		
New Hampshire	2		
New Jersey	14		
New Mexico	3		
New York	34	-1	-2
North Carolina	11		+1
North Dakota	1		
Ohio	21		
Oklahoma	6		
Oregon	5		
Pennsylvania	23		
Rhode Island	2		
South Carolina	6		
South Dakota	1		
Tennessee	9		
Texas	27		
Utah	3		
Vermont	1		
Virginia	10		
Washington	8		
West Virginia	4		
Wisconsin	9		
Wyoming	1		

SOURCE: Apportionments calculated on the Library of Congress central computer.

The 1990 Apportionment

Attempts to predict which States in 1990 will be affected by excluding the illegal aliens from State populations used to reapportion the House are almost certain to fail because of the assumptions of uncertain probability that must be made.⁷⁸ First, the likely population for each State as of April 1, 1990 must be projected. Table 7, for example, is based on three such projections which produce differing results. Second, a set of assumptions must be made about the illegal alien population, including: (1) how many will be counted in the next census; and (2) how they will be distributed among the States.

The first step, choosing a 1990 population projection, poses significant problems.

Caveats About Population Projections

Projecting population is an inexact science. Generally, projections for large geographic units are more likely to be accurate than those for smaller units. To illustrate this, CRS conducted a "test" using projections for predicting a future apportionment for which there are actual results, i.e. population projections issued by the Census Bureau in 1979 that estimated the 1980 population were used.

⁷⁸ The 1990 apportionment examples do not include information about excluding legal aliens in addition to illegal aliens because the issue currently before the Congress and the courts is one of excluding illegal aliens. Table 4, which presents data on excluding aliens from the 1980 apportionment illustrates that excluding all aliens would probably have a much greater impact on apportionment than excluding only illegals.

In 1979, the Bureau issued three separate projections of population for 1980 using three different sets of assumptions.⁷⁹ They all projected the same total for the U.S. population, 221,220,100 (5,284,800 less than the actual 226,504,800 census count). Signe Wetrogen, in the introduction to her 1983 Census Bureau projections, writes that "the series B set of State population projections was generally closer to the 1980 decennial data than either the series A or C set of projections."⁸⁰ Thus series B was chosen as the test population projection to predict the apportionment after the Census. A comparison of the apportionment results using series B with the actual 1980 apportionment results in the following differences. Five House seats would have switched among ten States. Five States would have each received one fewer seat than they actually received as a result of the 1980 Census: California, Nevada, New Mexico, Texas, and Washington; while five States would each have received one more seat than they actually received from the 1980 Census: Indiana, Maryland, Michigan, New Jersey, and New York.

Wetrogen reports that the "largest differences between these projections and 1980 Census occurred in the Western States, where the series B set of State projections were 6.4 percent lower than the census data. For the Northeast the turnarounds projected in the previous set of projections [series B] did not

⁷⁹ U.S. Bureau of the Census. Illustrative Projections of State Populations by Age, Race and Sex: 1975 to 2000. Series P-25, No. 796, Mar. 1979.

⁸⁰ U.S. Bureau of the Census. Provisional Projections of the Population of States by Age and Sex: 1980 to 2000. Series P-25, No. 937, Aug. 1983. p. 9. (Although all the projections were off by slightly more than five million persons, the series B projections came closer to the individual State totals than either the Series A and C projections.)

occur and the projected populations were 1.4 percent higher than the census data." 81

The 1979 projections illustrate the problematic nature of trying to predict future House apportionments. The apportionment formula is sensitive to minute population shifts. Adding or subtracting a small number of people from a State's population can make a difference in whether or not a seat is assigned to that State. Nevertheless, as imperfect as population projections are, they are a necessary component in the process of anticipating what representation in the House may be after the next reapportionment.

Caveats About Illegal Alien Assumptions in the Apportionment Illustrations

Although estimates exist as to how many illegal aliens were included in the Census counts of each of the States in 1980, as was discussed previously, no information is available about how many illegal aliens are currently residing in each State, or what proportion of them is likely to be counted in the 1990 Census. Because of the unknowables at this writing, it would be preferable to avoid tables that purport to show the impact of excluding illegal aliens from the 1990 Census, even for illustrative purposes, because they are even more speculative than tables based on population projections that are unadjusted to account for the alien population.

Nevertheless, in response to congressional requests to provide such information, Table 7 has been prepared. At the outset, it should be

81 Ibid.

noted that: first, the table uses three different population projections for 1990 which produce different populations for the States; second, it is based on the doubtful assumption that the illegal alien population will be distributed in exactly the same fashion as Passel and Woodrow estimated that it was in 1980; and third, it reports results for illegal alien populations of two million to ten million persons in two million person increments.

Table 7 should be read subject to the following caveats:

- (1) The 1990 population projections may be wrong. Even if the projections are substantially right, very small population differences can affect how seats are assigned.⁸²
- (2) Assuming that the illegal alien population will be distributed among the States in the same proportions that Passel and Woodrow estimated in the 1980 Census may also be wrong. In population forecasting past is not always prologue. This method to distribute the illegal alien population was chosen because no other alternative is available at this time.
- (3) The illegal alien populations shown in the table (two million to ten million in two million person increments) are completely arbitrary. There is no way of knowing how many aliens will be counted in the 1990 Census.

Given these caveats, how should the table be read? First, one must keep in mind the illegal alien distribution information contained in Tables 1 and 2. If one accepts the fundamental assumption that the distribution of the illegal alien population in 1990 will mirror the estimate of that distribution in 1980, the likelihood of an individual State being affected by excluding the illegal aliens is dependent on (1) how many such aliens are subtracted, and (2) how close the State is to losing a seat in the House. An example from the 1980 Census can illustrate this point.

⁸² In 1971, fewer than 300 persons determined whether Connecticut received seven seats, leaving Oklahoma with five seats. Both States received six seats that year.

In 1980, New York's 34th seat in the House was the last seat assigned (seat number 435). Indiana just missed retaining 11 seats in the House.⁸³ If New York's population had been smaller by 23,063 persons, or if Indiana had been larger by 7,226 persons, Indiana would have had the 435th seat in the House and New York would have had one less seat. According to Passel and Woodrow's estimates, New York had 234,000 illegal aliens in its census count (1.33 percent of New York's total of 17,557,288 persons); Indiana had 8,000 illegal aliens (.15 percent of Indiana's total of 5,490,179 persons). If illegal aliens had been excluded from all the States' populations according to Passel and Woodrow's estimates, New York would have lost enough population, as compared with Indiana's lesser loss, to enable Indiana's 11th seat to "bump up" five positions to number 433; New York's 34th seat would have dropped three positions to 438; thereby causing New York to lose a seat and Indiana to retain its 11th seat.

In the case of California and Georgia, the two other States which would have been affected if the 1980 Census had excluded illegal aliens, the situation is more dramatic. According to Passel and Woodrow's estimates, California had 1,024,000 illegal aliens (4.33 percent of California's 23,668,562 persons); Georgia had 12,000 illegal aliens (.22 percent of Georgia's 5,464,265 persons). Excluding illegal aliens would have lowered California's claim to a 45th seat in the House which stood at 425, to 442; Georgia's 11th seat would have moved up to 435 from 437, causing California to lose and Georgia to gain a seat.

⁸³ Indiana's 11th seat numbered 436 in priority.

Although California, New York, Georgia and Indiana are the only States that would have actually lost or gained seats as a result of using Passel and Woodrow's estimates to adjust the counts to exclude the illegal alien population, Table 5, below, illustrates that excluding the illegal alien population would have affected the entire sequence of seat assignments.

Table 5. 1980 Census Seat Assignment Rankings Before and After
Adjusting for 2,000,000 Illegal Aliens (Showing Seat Assignments
Numbers 420-440)

Seq- uence	Actual 1980 census assignments			1980 assignments adjusted to exclude illegal aliens		
	State	Seat	Priority	State	Seat	Priority
420	Minnesota	8	5,448,318	New York	33	5,330,721
421	California	44	5,441,408	California	43	5,328,561
422	Tennessee	9	5,410,251	Iowa	6	5,314,756
423	New York	33	5,403,882	Texas	27	5,299,881
424	Texas	27	5,370,157	Michigan	18	5,288,221
425	California	45	5,319,114	Pennsylvania	23	5,272,090
426	Iowa	6	5,319,093	Kansas	5	5,266,221
427	Illinois	22	5,312,349	Ohio	21	5,263,880
428	New Mexico	3	5,307,097	New Mexico	3	5,243,341
429	Michigan	18	5,292,643	Oregon	5	5,250,520
430	Kansas	5	5,284,294	Illinois	22	5,249,301
431	Pennsylvania	23	5,275,404	Colorado	6	5,240,420
432	Colorado	6	5,274,265	Indiana	11	5,227,491
433	Ohio	21	5,268,601	Florida	19	5,223,381
434	Florida	19	5,266,784	California	44	5,206,051
435	New York	34	5,241,565	Georgia	11	5,198,851
- Sequence Number 435 is the Last Seat Assignment Allowed by Law -						
436	Indiana	11	5,234,680	Alabama	8	5,191,900
437	Georgia	11	5,209,972	Missouri	10	5,176,701
438	California	46	5,202,196	New York	34	5,171,551
439	Alabama	8	5,198,313	Texas	28	5,107,091
440	Missouri	10	5,183,441	North Carolina	12	5,104,921

Changing the sequence of assignments affects the States relatively. Thus, certain State's seat assignments may be altered in their relationship to the 435th seat cutoff point mandated by law.⁸⁴ This property expands the number

⁸⁴ 55 Stat. 761. (1941) Sec. 22 (a). Codified in 2 USC 2(a). For a fuller explanation of the reapportionment process, see: U.S. Library of Congress. Congressional Research Service. Apportioning Seats in the House of Representatives: the Method of Equal Proportions. Report No. 88-143 GOV, by David C. Huckabee. Washington, 1988.

of seats which potentially are affected when evaluating an apportionment scenario because of the very small differences in population which can make a difference in whether a State gains, loses, or retains a seat. The NPA Data Services 1990 projection can serve as an example. Table 6, below sets out the sequence of seat assignments between 420 and 440 using these projections.

Table 6. Projected 1990 Census Seat Assignment Rankings Before and After Adjusting for 2,000,000 Illegal Aliens (Showing Seat Assignment Numbers 420-440), Using NPA Data Service Projections

Sequence	Projected 1990 census assignments			1990 assignments adjusted to exclude illegal aliens		
	State	Seat	Priority*	State	Seat	Priority*
420	Michigan	16	5,944,900	Kentucky	7	5,935,890
421	Mississippi	5	5,943,461	Minnesota	8	5,878,941
422	Kentucky	7	5,942,061	*California	47	5,870,891
423	Illinois	20	5,914,551	Tennessee	9	5,861,320
424	Minnesota	8	5,889,630	Louisiana	8	5,857,691
425	New York	31	5,880,312	*Illinois	20	5,846,841
426	Tennessee	9	5,868,390	Wisconsin	9	5,837,631
427	Louisiana	8	5,865,710	Florida	22	5,829,010
428	Florida	22	5,865,301	*New York	31	5,814,550
429	Wisconsin	9	5,847,060	New Jersey	14	5,806,641
430	California	49	5,834,961	Texas	30	5,762,350
431	New Jersey	14	5,833,330	Virginia	11	5,760,431
432	Texas	30	5,824,051	*California	48 -1	5,747,281
433	Virginia	11	5,790,941	Massachusetts	11	5,741,171
434	Massachusetts	11	5,756,430	North Carolina	12	5,718,100
435	North Carolina	12	5,725,061	Pennsylvania	22 +1	5,707,211
- Sequence Number 435 is the Last Seat Assignment Allowed by Law -						
436	California	50	5,834,961	Ohio	20	5,645,591
437	Pennsylvania	22	5,710,000	West Virginia	4	5,636,090
438	New York	32	5,702,301	New York	32	5,629,470
439	Ohio	20	5,650,521	*California	49	5,628,400
440	West Virginia	4	5,640,131	Michigan	17	5,588,384

- * States losing relative priority position due to excluding illegal aliens.
 - States gaining relative priority position due to excluding illegal aliens.
 +- States where excluding illegal aliens altered the number of seats assigned are indicated by a "+" or "-" sign, followed by the number of seats the State would gain or lose over no adjustment.

Although only two States, California (-1) and Pennsylvania (+1), would actually have their allocation of seats changed under this scenario, the priority listing of seat assignments would be changed for all States. Table 6 illustrates that adjusting for the illegal alien population would alter priority rankings, *i.e.* putting some States in a lower position and others in a higher position. Thus, while California and Pennsylvania are the only changes indicated by this example, if the MPA Data Services based projections are not exactly correct (but they are close to being correct) other States on the priority listing near position 435 may be affected instead of, or in addition to, these States.

1990 Apportionment Scenarios

Given the caveats cited above, and the information available to us about the distribution of the illegal alien population, California would be likely (but not certain) to be particularly affected by excluding illegal aliens ⁸⁵ (because it was estimated to have half the illegal aliens counted in the 1980 Census). Which other States might be affected depends on how many illegal aliens are counted in each State's population, as well as how close a State is to gaining or losing a seat. Thus, there may be a larger number of States which may be potentially affected than is reflected in Table 7 below. ⁸⁶

⁸⁵ This assumes that at least as many illegals will be counted in 1990 as were counted in 1980 and that the distribution of the illegal alien population in 1990 will mirror the 1980 distribution. If a very small number of illegals are included in the 1990 Census, it is possible that no States would be affected.

⁸⁶ Appendix A illustrates this point by setting out priority listings of House seat assignments for three population projections, side-by-side. By referring to the sequence number above and below number 435 (the last seat assigned in the House), one can see that the potential universe of gainers and
(continued...)

Table 7 reports the results of trial apportionments based on 1990 population projections produced by the Census Bureau in 1988, NPA Data Services in 1987, and the Bureau of Economic Analysis in 1985. The table presents what the seat assignments would be for each State if each estimate were correct, and then what would happen if various populations of illegal aliens were to be subtracted from the projected apportionment population.

86 (...continued)

losers from an illegal alien adjustment is larger than one would assume from the information contained in table 7.

Change in projected 1990 apportionment if illegals are subtracted:

	Current 1980 apport.	Projected 1990 apportionment			2,000,000			4,000,000			6,000,000		
		Census	NPA Data	BEA	Census	NPA Data	BEA	Census	NPA Data	BEA	Census	NPA Data	BEA
Alabama	7	7	7	7	-1	-1	-2	-2	-3	-3	-4	-4	
Alaska	1	1	1	1									
Arizona	5	7	6	6									
Arkansas	4	4	4	4									
California	45	50	49	49									
Colorado	6	6	6	6									
Connecticut	6	6	6	6									
Delaware	1	1	1	1									
Florida	19	22	22	22									
Georgia	10	12	11	11									
Hawaii	2	2	2	2									
Idaho	2	2	2	2									
Illinois	22	20	20	20									
Indiana	10	10	10	10									
Iowa	6	5	5	5									
Kansas	5	4	4	4						+1		+1	
Kentucky	7	7	7	7									
Louisiana	8	8	8	8									
Maine	2	2	2	2									
Maryland	8	8	8	8									

Table 7. 1990 Apportionment Scenarios Assuming Various Estimates of the Illegal Alien Population Are Subtracted From Each State's Population in the Proportion That They Were Estimated to be in 1980--Part 1, Continued

	Current 1980 apport.	Change in projected 1990 apportionment if illegals are subtracted:									
		Projected 1990 apportionment		2,000,000		4,000,000		6,000,000			
		Census	NPA Data	BEA	Census	NPA Data	BEA	Census	NPA Data		
Massachusetts	11	10	11	11							
Michigan	18	16	16	16							
Minnesota	8	8	8	8						+1	+1
Mississippi	5	5	5	5							
Missouri	9	9	9	9							
Montana	2	1	2	2							
Nebraska	3	3	3	3						+1	+1
Nevada	2	2	2	2							
New Hampshire	2	2	2	2							
New Jersey	14	14	14	14							
New Mexico	3	3	3	3							
New York	34	31	31	32							
North Carolina	11	12	12	11						-1	-1
North Dakota	1	1	1	1						+1	+1
Ohio	21	19	19	19						+1	+1
Oklahoma	6	6	6	6							
Oregon	5	5	5	5							
Pennsylvania	23	20	21	21						+1	+1
Rhode Island	2	2	2	2							
South Carolina	6	6	6	6							

Table 7. 1990 Apportionment Scenarios Assuming Various Estimates of the Illegal Alien Population Are Subtracted From Each State's Population in the Proportion That They Were Estimated to be in 1980--Part I, Continued

	Current 1980 apport.	Change in projected 1990 apportionment if illegals are subtracted:											
		Projected 1990 apportionment				2,000,000				4,000,000			
		Census	NPA	Data	BEA	Census	NPA	Data	BEA	Census	NPA	Data	BEA
South Dakota	1	1	1	1	1								
Tennessee	9	9	9	9									
Texas	27	31	30	31					-1				-1
Utah	3	3	3	3									
Vermont	1	1	1	1									
Virginia	10	11	11	10									
Washington	8	8	8	8									
West Virginia	4	3	3	3					+1			+1	+1
Wisconsin	9	8	9	9									
Wyoming	1	1	1	1									

SOURCES: See notes at end of part II of Table 7.

Table 7. 1990 Apportionment Scenarios Assuming Various Estimates of the Illegal Alien Population Are Subtracted From Each State's Population in the Proportion That They Were Estimated to be in 1980: Part 2--Subtraction of 8 and 10 Million Aliens

	Change in projected 1990 apportionment if illegals are subtracted:									
	Projected 1990 apportionment					8,000,000				
	Current 1980 apport.	Census	NPA Data	BEA	Census	NPA Data	BEA	Census	NPA Data	BEA
Alabama	7	7	7	7	7	+1				
Alaska	1	1	1	1	1				+1	
Arizona	5	7	6	6	6					
Arkansas	4	4	4	4	4					
California	45	50	49	49	49	-5	-5	-5	-6	-7
Colorado	6	6	6	6	6					
Connecticut	6	6	6	6	6					
Delaware	1	1	1	1	1					
Florida	19	22	22	22	22	+1			+1	
Georgia	10	12	11	11	11		+1		+1	+1
Hawaii	2	2	2	2	2					
Idaho	2	2	2	2	2					
Illinois	22	20	20	20	20					
Indiana	10	10	10	10	10					
Iowa	6	5	5	5	5					
Kansas	5	4	4	4	4			+1	+1	+1
Kentucky	7	7	7	7	7					
Louisiana	8	8	8	8	8					
Maine	2	2	2	2	2					
Maryland	8	8	8	8	8					

Table 7. 1990 Apportionment Scenarios Assuming Various Estimates of the Illegal Alien Population Are Subtracted From Each State's Population in the Proportion That They Were Estimated to be in 1980: Part 2--Subtraction of 8 and 10 Million Aliens

	Change in projected 1990 apportionment if aliens are subtracted:									
	Projected 1990 apportionment					8,000,000				
	Current 1980 apport.	Census	NPA Data	BEA	Census	Census	NPA Data	BEA	Census	NPA Data
Massachusetts	11	10	11	11						
Michigan	18	16	16	16						
Minnesota	8	8	8	8						
Mississippi	5	5	5	5						
Missouri	9	9	9	9						
Montana	2	1	2	2						
Nebraska	3	3	3	3						
Nevada	2	2	2	2						
New Hampshire	2	2	2	2						
New Jersey	14	14	14	14						
New Mexico	3	3	3	3						
New York	34	31	31	32						
North Carolina	11	12	12	11						
North Dakota	1	1	1	1						
Ohio	21	19	19	19						
Oklahoma	6	6	6	6						
Oregon	5	5	5	5						
Pennsylvania	23	20	21	21						
Rhode Island	2	2	2	2						
South Carolina	6	6	6	6						

Table 7. 1990 Apportionment Scenarios Assuming Various Estimates of the Illegal Alien Population Are Subtracted From Each State's Population in the Proportion That They Were Estimated to be in 1980: Part 2--Subtraction of 8 and 10 Million Aliens

	Change in projected 1990 apportionment if aliens are subtracted:									
	Projected 1990 apportionment					10,000,000				
	Current 1980 apport.	Census	NPA Data	BEA	Census	NPA Data	BEA	Census	NPA Data	BEA
South Dakota	1	1	1	1						
Tennessee	9	9	9	9						
Texas	27	31	30	31			-1	-1		-1
Utah	3	3	3	3						
Vermont	1	1	1	1						
Virginia	10	11	11	10						
Washington	8	8	8	8			+1			+1
West Virginia	4	3	3	3			+1		+1	+1
Wisconsin	9	8	9	9	+1					
Wyoming	1	1	1	1			+1			+1

SOURCES: The NPA Data apportionments were computed based on: NPA Data Services, Inc. Regional Economic Projections Series 1986-R-1. Summary Table 2. State Population, Employment, Personal Income, 1970-2010. Jan. 1987. The BEA apportionments were computed based on: U.S. Dept. of Commerce. Bureau of Economic Analysis. Regional Economic Analysis Division. Regional State Projections of Income, Employment, and Population to the Year 2000. Survey of Current Business, v. 65, no. 5, May 1985. p. 48. The Census apportionments were computed based on: U.S. Dept. of Commerce. Bureau of the Census. Commerce News (C888-48). Three States Likely to Provide Half of U.S. Population Growth into the Next Century. April 1, 1988.

Method: Data on the State-by-State distribution of undocumented immigrants were obtained from: Passel, Jeffrey S. and Karen A. Woodrow. Geographic Distribution of Undocumented Immigrants: Estimates of Undocumented Aliens Counted in the 1980 Census by State. International Migration Review, v. 18, no. 3, Fall 1984. From the information presented, it is possible to compute an estimate of the proportion of the total U.S. population of undocumented aliens living in each State. This proportion is multiplied by various assumptions of the numbers of aliens that may be counted in the 1990 census. The resulting products of the multiplications are subtracted from each State's population. These adjusted populations are used to compute trial apportionments.

With the exception of the two million illegal alien level which is included in Table 7 because it relates to Passel and Woodrow's 2.04 million estimate for 1980, the other levels--ranging from four million to ten million--are arbitrary choices. At the two million level, all three population projections (adjusted to exclude illegal aliens) show California receiving one seat less than it would have without this alien exclusion. Two of the three projections (Census and NPA Data Services) show Pennsylvania being benefited by losing one less seat than it would have otherwise. The BEA projections, in addition to indicating California's relative loss of a seat, show Texas not gaining one seat and Kansas and West Virginia not losing a seat that these States would have otherwise gained or lost. As the number of illegal aliens increases (four million, six million, etc.), more States are affected and the magnitude of the seat gains or losses also become larger. However, the likelihood of the Census including 4, 6, 8, or 10 million illegal aliens is probably low.

A more conservative approach to assessing the impact of illegal aliens on the 1990 apportionment, not reflected in Table 7, would be to assume that the total number of illegal aliens counted in the 1990 Census will be significantly lower than in 1980, because of the legalization process. One way of examining this alternative is to subtract the total number of I-687 applicants (illegal aliens who were in the country prior to 1982) from Passel and Woodrow's estimates of the number of illegals counted in each State in 1980, and then subtract this number from the Census Bureau 1990 population projections. At this writing, this procedure would allocate fewer than one million illegal aliens among the fifty States. This procedure results in one House seat changing hands. Pennsylvania would retain a seat that it would have otherwise lost, and Minnesota would lose a seat. (Without an illegal alien adjustment in

this example Minnesota's eighth seat was ranked 435 in priority with Pennsylvania's 21st seat ranking 436. With the illegal alien adjustment, Minnesota's eighth seat drops in rank to 436 and Pennsylvania's 21st seat moves up in rank to 435.) Although Passel and Woodrow estimated that both States had very few illegal aliens included in their 1980 census count (9,000 for Minnesota and 7,000 for Pennsylvania), in this illustration a seat shifts between these States because they were near or at the 435th seat in the priority listing.

CONCLUSION

Numerous uncertainties of trying to predict future apportionments have been described in this report, including: that small population differences can make and have made a difference in apportionments; the difficulty of making illegal alien counts or estimates; the problems with using population projections to predict apportionments and the disagreement among projections. The reader should thus be alerted that the trial apportionments discussed in the preceding section should be regarded as illustrative, rather than as predictions of what might happen if illegals are not included in the 1990 apportionment count.

If a decision were made to exclude illegals, a method for doing so that would be fair to all the States would have to be found. Several different methods have been discussed, together with the advantages and disadvantages of each. Only one of the methods (Passel and Woodrow's residual technique for deriving State-level estimates of illegals counted in the census) would not involve changing the census questionnaire. However, Passel and Woodrow's method not only involves many assumptions, but also will be infeasible unless

the INS Alien Registration Program or an equivalent is reinstituted. Moreover, as previously noted, if illegal aliens were excluded from the apportionment population and not similarly excluded from the sub-State populations used for redrawing districts within States, concentrations of illegals within States might affect redistricting in ways that could well be considered unfair i.e. the problem of illegals would be corrected at one level of the process (apportionment), but not at the other (redistricting). Finally, any method would have to be implemented so as to meet the statutory deadlines for reporting the apportionment population and for redistrictings to occur in time for the 1992 House elections.

APPENDICES

Appendices A and B provide comparative information about the priority listings for apportionment (based on the three different population projections for 1990) used in this report.

Appendix A is a comparative table of priority lists assuming that two million illegal aliens are excluded from the differing population projections by the Commerce Department's Census Bureau, Bureau of Economic Analysis (BEA), and a private company, NPA Data Services, Inc. The table is based on the assumption that the illegal alien population will be distributed proportional to Passel and Woodrow's estimates from the 1980 Census. The differing priority rankings for each of the projections illustrates how the priority rankings are altered by differing population assumptions.

Appendix B gives the adjusted State populations (to exclude two million illegal aliens) used to produce the priority listings in Appendix A.

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Appendix A. Comparative Priority Lists Based on Three Population Projections
for 1990 (State Populations Adjusted to Exclude 2,000,000 Illegal Aliens
Proportional to Passel and Woodrow's Estimates for 1980)*

Census 1990 projections			NPA data 1990 projections			BEA 1990 projections					
Seq.	State seat	priority	Seq.	State seat	priority	Seq.	State seat	priority			
51	CA	2	019886812.19	51	CA	2	019301398.50	51	CA	2	019069396.77
52	NY	2	012405198.31	52	NY	2	012537427.27	52	NY	2	012750973.52
53	TX	2	012395440.24	53	TX	2	012018198.77	53	TX	2	012168458.96
54	CA	3	011481655.31	54	CA	3	011143666.58	54	CA	3	011009720.34
55	FL	2	009008115.97	55	FL	2	008858916.44	55	FL	2	008803055.01
56	PA	2	008357860.58	56	PA	2	008673371.62	56	PA	2	008515545.39
57	CA	4	008118757.07	57	IL	2	008058895.84	57	IL	2	008120696.97
58	IL	2	008117161.44	58	CA	4	007879762.93	58	CA	4	007785048.62
59	OH	2	007623600.92	59	OH	2	007781922.12	59	OH	2	007611580.10
60	NY	3	007162143.92	60	NY	3	007238486.34	60	NY	3	007361777.31
61	TX	3	007156510.09	61	TX	3	006938709.65	61	TX	3	007025462.41
62	MI	2	006565769.19	62	MI	2	006517120.24	62	MI	2	006514857.50
63	CA	5	006288761.38	63	CA	5	006103637.34	63	CA	5	006030271.96
64	NJ	2	005559980.52	64	NJ	2	005539191.58	64	NJ	2	005591093.22
65	FL	3	005200837.70	65	NY	4	005118383.24	65	NY	4	005205563.13
66	CA	6	005134751.99	66	FL	3	005114697.32	66	FL	3	005082445.71
67	NY	4	005064401.00	67	PA	3	005007572.98	67	TX	4	004967752.56
68	TX	4	005060417.28	68	CA	6	004983598.85	68	CA	6	004923696.27
69	PA	3	004825412.61	69	TX	4	004906409.10	69	PA	3	004916451.97
70	NC	2	004724038.90	70	IL	3	004652805.25	70	IL	3	004688486.15
71	GA	2	004703249.96	71	NC	2	004644560.10	71	NC	2	004580496.22
72	IL	3	004686444.91	72	GA	2	004509431.99	72	GA	2	004462833.66
73	OH	3	004401487.63	73	OH	3	004492894.41	73	OH	3	004394547.41
74	CA	7	004339657.21	74	VA	2	004270783.46	74	MA	2	004378263.69
75	VA	2	004329756.16	75	MA	2	004256924.17	75	CA	7	004161282.58
76	MA	2	004145625.56	76	CA	7	004211909.50	76	VA	2	004152272.36
77	NY	5	003922867.64	77	IN	2	003997486.69	77	NY	5	004032211.35
78	TX	5	003919781.87	78	NY	5	003964682.11	78	IN	2	003955979.53
79	IN	2	003919209.97	79	TX	5	003800487.66	79	TX	5	003848004.10
80	MI	3	003790748.26	80	MI	3	003762660.78	80	MI	3	003761354.38
81	CA	8	003758252.98	81	MO	2	003654893.46	81	MO	2	003655317.73
82	FL	4	003677547.94	82	CA	8	003647620.23	82	CA	8	003603776.03
83	MO	2	003666631.44	83	FL	4	003616637.49	83	FL	4	003593832.15
84	TN	2	003511209.37	84	PA	4	003540889.13	84	PA	4	003476456.84
85	PA	4	003412082.29	85	TN	2	003516512.67	85	WI	2	003475288.34
86	WI	2	003393971.07	86	WI	2	003502441.24	86	TN	2	003456762.15
87	MD	2	003321704.75	87	WA	2	003319583.43	87	WA	2	003351968.92

* The priority listing begins with sequence number 51 because the first first 50 seats are assigned to the States by the Constitution.

Appendix A. Comparative Priority Lists Based on Three Population Projections
for 1990 (State Populations Adjusted to Exclude 2,000,000 Illegal Aliens
Proportional to Passel and Woodrow's Estimates for 1980)--Continued

Census 1990 projections			NPA data 1990 projections			BEA 1990 projections					
Seq.	State seat	priority	Seq.	State seat	priority	Seq.	State seat	priority			
88	CA	9	003314467.30	88	IL	4	003290030.44	88	IL	4	003315260.65
89	IL	4	003313817.28	89	MD	2	003258772.25	89	NY	6	003292286.67
90	WA	2	003277722.71	90	NY	6	003237149.27	90	LA	2	003287339.36
91	NJ	3	003210055.95	91	CA	9	003216898.39	91	NJ	3	003228018.87
92	NY	6	003203007.90	92	NJ	3	003198053.45	92	CA	9	003178231.45
93	TX	6	003200488.38	93	OH	4	003176956.40	93	MD	2	003161898.62
94	LA	2	003186223.10	94	MN	2	003110138.41	94	TX	6	003141882.08
95	OH	4	003112322.04	95	TX	6	003103085.07	95	MN	2	003116219.53
96	MN	2	003051165.70	96	LA	2	003098895.41	96	OH	4	003107414.56
97	CA	10	002964549.56	97	AL	2	002899562.01	97	AL	2	002847801.80
98	AL	2	002953160.71	98	CA	10	002877281.28	98	CA	10	002842696.52
99	FL	5	002848616.02	99	FL	5	002801434.99	99	FL	5	002783770.06
100	NC	3	002727424.87	100	PA	5	002742760.58	100	NY	7	002782489.90
101	GA	3	002715422.38	101	NY	7	002735890.30	101	PA	5	002692851.55
102	NY	7	002707035.58	102	KY	2	002719886.18	102	KY	2	002665509.67
103	TX	7	002704906.20	103	NC	3	002681537.77	103	MI	4	002659679.43
104	CA	11	002681535.94	104	MI	4	002660603.19	104	TX	7	002655374.84
105	MI	4	002680464.04	105	TX	7	002622585.38	105	NC	3	002644550.48
106	KY	2	002645003.58	106	GA	3	002603521.53	106	GA	3	002576617.97
107	PA	5	002642987.24	107	CA	11	002602598.81	107	CA	11	002571315.72
108	AZ	2	002635952.61	108	AZ	2	002552019.04	108	IL	5	002567989.53
109	IL	5	002566871.50	109	IL	5	002548446.30	109	CO	2	002545442.94
110	SC	2	002506552.07	110	SC	2	002528896.64	110	AZ	2	002528472.38
111	VA	3	002499785.65	111	CO	2	002493753.44	111	MA	3	002527791.48
112	CA	12	002447897.04	112	VA	3	002465737.75	112	SC	2	002445740.89
113	CO	2	002415335.30	113	OH	5	002460859.53	113	OK	2	002439376.93
114	OH	5	002410793.97	114	MA	3	002457736.08	114	NY	8	002409706.68
115	MA	3	002393477.81	115	CA	12	002375837.60	115	OH	5	002406992.66
116	NY	8	002344361.33	116	NY	8	002369350.25	116	VA	3	002397315.34
117	TX	8	002342517.23	117	OK	2	002351554.27	117	CT	2	002396384.84
118	FL	6	002325885.16	118	CT	2	002321997.20	118	CA	12	002347280.17
119	CT	2	002315774.66	119	IN	3	002307949.80	119	TX	8	002299621.81
120	OK	2	002314926.14	120	FL	6	002287362.01	120	IN	3	002283985.63
121	NJ	4	002269852.54	121	TX	8	002271225.32	121	NJ	4	002282554.24
122	IN	3	002262756.72	122	NJ	4	002261365.49	122	FL	6	002272938.65
123	CA	13	002251737.58	123	PA	6	002239454.56	123	PA	6	002198704.00
124	PA	6	002157989.97	124	CA	13	002185452.55	124	CA	13	002159183.53

Appendix A. Comparative Priority Lists Based on Three Population Projections
for 1990 (State Populations Adjusted to Exclude 2,000,000 Illegal Aliens
Proportional to Passel and Woodrow's Estimates for 1980)--Continued

Census 1990 projections			NPA data 1990 projections			BEA 1990 projections					
Seq.	State seat	priority	Seq.	State seat	priority	Seq.	State seat	priority			
125	MO	3	002116930.45	125	MO	3	002110153.53	125	NY	9	002125161.35
126	IL	6	002095841.73	126	NY	9	002089570.33	126	MO	3	002110398.48
127	CA	14	002084702.74	127	IL	6	002080797.62	127	IL	6	002096754.60
128	MI	5	002076278.25	128	MI	5	002060894.11	128	IA	2	002075075.52
129	NY	9	002067532.18	129	TN	3	002030259.35	129	MI	5	002060178.57
130	TX	9	002065905.83	130	IA	2	002024446.67	130	TX	9	002028075.63
131	TN	3	002027197.48	131	CA	14	002023334.76	131	WI	3	002006458.47
132	IA	2	002002243.52	132	WI	3	002022135.21	132	OR	2	001999556.52
133	OH	6	001968404.97	133	OH	6	002009283.32	133	CA	14	001999014.39
134	FL	7	001965731.61	134	OR	2	002008395.35	134	TN	3	001995762.37
135	WI	3	001959509.92	135	TX	9	002003032.28	135	OH	6	001965301.21
136	OR	2	001945816.40	136	FL	7	001933173.61	136	WA	3	001935259.98
137	CA	15	001940752.68	137	WA	3	001916562.21	137	FL	7	001920983.65
138	NC	4	001928580.80	138	NC	4	001896133.72	138	MS	2	001912158.12
139	GA	4	001920093.75	139	PA	7	001892684.42	139	NY	10	001900802.02
140	MD	3	001917786.95	140	CA	15	001883622.19	140	LA	3	001897946.09
141	MS	2	001905794.16	141	MD	3	001881452.86	141	NC	4	001869979.75
142	WA	3	001892393.91	142	MS	2	001876802.78	142	CA	15	001860981.16
143	NY	10	001849256.92	143	NY	10	001868968.44	143	PA	7	001858243.92
144	TX	10	001847802.28	144	GA	4	001840967.90	144	MD	3	001825522.85
145	LA	3	001839566.59	145	MN	3	001795639.08	145	GA	4	001821944.21
146	PA	7	001823834.29	146	TX	10	001791566.47	146	TX	10	001813965.92
147	CA	16	001815408.23	147	LA	3	001789147.93	147	MN	3	001799150.01
148	IL	7	001771309.44	148	CA	16	001761967.55	148	KS	2	001787565.91
149	VA	4	001767615.55	149	KS	2	001759635.19	149	MA	4	001787418.66
150	MN	3	001761591.18	150	IL	7	001758594.85	150	IL	7	001772080.95
151	NJ	5	001758219.99	151	NJ	5	001751645.95	151	NJ	5	001768058.69
152	KS	2	001756453.21	152	VA	4	001743540.04	152	CA	16	001740788.80
153	AR	2	001713885.38	153	MA	4	001737882.01	153	AR	2	001732977.26
154	CA	17	001705280.07	154	AR	2	001736442.09	154	NY	11	001719340.10
155	AL	3	001705007.97	155	OH	7	001698154.24	155	VA	4	001695158.09
156	FL	8	001702373.33	156	NY	11	001690545.55	156	MI	6	001682128.70
157	MI	6	001695274.03	157	MI	6	001682712.93	157	FL	8	001663620.46
158	MA	4	001692444.54	158	FL	8	001674177.28	158	OH	7	001660982.57
159	NY	11	001672715.81	159	AL	3	001674062.75	159	AL	3	001644178.98
160	TX	11	001671400.03	160	CA	17	001655081.26	160	TX	11	001640793.89

Appendix A. Comparative Priority Lists Based on Three Population Projections
for 1990 (State Populations Adjusted to Exclude 2,000,000 Illegal Aliens
Proportional to Passel and Woodrow's Estimates for 1980)--Continued

Census 1990 projections			NPA data 1990 projections			BEA 1990 projections		
Seq.	State seat	priority	Seq.	State seat	priority	Seq.	State seat	priority
161 OH	7	001663605.73	161 PA	8	001639112.61	161 CA	17	001635187.28
162 CA	18	001607753.43	162 IN	4	001631967.10	162 IN	4	001615021.87
163 IN	4	0016000.77	163 TX	11	001620532.82	163 PA	8	001609286.27
164 PA	8	001579486.65	164 KY	3	001570326.87	164 NY	12	001569536.13
165 IL	8	001533998.80	165 CA	18	001560425.54	165 CA	18	001541669.31
166 KY	3	001527093.38	166 NY	12	001543250.41	166 KY	3	001538932.58
167 NY	12	001526974.15	167 IL	8	001522987.64	167 IL	8	001534666.96
168 TX	12	001525773.01	168 MO	4	001492104.00	168 TX	12	001497833.55
169 AZ	3	001521867.81	169 TX	12	001479337.81	169 MO	4	001492277.21
170 CA	19	001520782.55	170 FL	9	001476485.45	170 CO	3	001469612.03
171 FL	9	001501352.02	171 CA	19	001476014.85	171 FL	9	001467175.21
172 MO	4	001496896.01	172 AZ	3	001473408.74	172 AZ	3	001459814.07
173 NC	5	001493872.07	173 OH	8	001470644.55	173 CA	19	001458273.23
174 GA	5	001487298.03	174 NC	5	001468738.67	174 NC	5	001448479.90
175 SC	3	001447158.38	175 SC	3	001460059.02	175 NY	13	001443763.13
176 CA	20	001442740.98	176 PA	9	001445561.32	176 NJ	6	001443613.82
177 OH	8	001440724.66	177 CO	3	001439769.08	177 OH	8	001438452.94
178 NJ	6	001435580.56	178 TN	4	001435610.28	178 MI	7	001421658.13
179 TN	4	001433445.22	179 NJ	6	001430212.88	179 PA	9	001419256.96
180 MI	7	001432767.97	180 WI	4	001429865.65	180 WI	4	001418780.52
181 NY	13	001404611.81	181 GA	5	001426007.42	181 SC	3	001412049.03
182 TX	13	001403506.92	182 MI	7	001422151.90	182 GA	5	001411271.73
183 CO	3	001394494.35	183 NY	13	001419583.79	183 TN	4	001411217.23
184 PA	9	001392976.17	184 CA	20	001400270.61	184 OK	3	001408374.79
185 WI	4	001385582.88	185 WV	2	001380555.25	185 WV	2	001392010.38
186 CA	21	001372320.43	186 TX	13	001360792.75	186 MA	5	001384528.36
187 VA	5	001369188.94	187 OK	3	001357670.36	187 CT	3	001383553.30
188 MD	4	001356080.28	188 WA	4	001355214.26	188 CA	20	001383439.43
189 IL	9	001352859.67	189 VA	5	001350540.14	189 TX	13	001377806.36
190 FL	10	001342850.02	190 MA	5	001346157.44	190 WA	4	001368435.58
191 WA	4	001338124.69	191 IL	9	001343148.74	191 IL	9	001353448.92
192 CT	3	001337013.00	192 CT	3	001340605.58	192 LA	4	001342050.67
193 OK	3	001336523.10	193 CA	21	001331923.05	193 NY	14	001336664.17
194 WV	2	001311400.21	194 MD	4	001330388.20	194 CA	21	001315913.41
195 MA	5	001310961.74	195 FL	10	001320608.68	195 VA	5	001313063.64
196 CA	22	001308456.13	196 NY	14	001314278.46	196 FL	10	001312281.35
197 LA	4	001300770.13	197 OH	9	001296986.47	197 UT	2	001308571.78

Appendix A. Comparative Priority Lists Based on Three Population Projections
for 1990 (State Populations Adjusted to Exclude 2,000,000 Illegal Aliens
Proportional to Passel and Woodrow's Estimates for 1980)--Continued

Census 1990 projections			NPA data 1990 projections			BEA 1990 projections		
Seq.	State	seat priority	Seq.	State	seat priority	Seq.	State	seat priority
198	NY	14 001300417.11	198	PA	10 001292949.30	198	MD	4 001290839.70
199	TX	14 001299394.19	199	CA	22 001269938.73	199	TX	14 001275600.10
200	OH	9 001270599.61	200	MN	4 001269708.68	200	MN	4 001272191.29
201	CA	23 001250273.12	201	LA	4 001265118.75	201	PA	10 001269421.97
202	UT	2 001249881.92	202	IN	5 001264116.12	202	OH	9 001268596.14
203	PA	10 001245915.72	203	TX	14 001259848.57	203	CA	22 001254674.14
204	MN	4 001245633.18	204	UT	2 001254407.40	204	IN	5 001250990.40
205	MI	8 001240813.32	205	MI	8 001231619.54	205	NY	15 001244366.65
206	IN	5 001239362.85	206	NY	15 001223526.69	206	MI	8 001231191.92
207	NC	6 001219741.40	207	CA	23 001213468.48	207	NJ	7 001220076.29
208	FL	11 001214653.53	208	NJ	7 001208750.42	208	IL	10 001210561.47
209	GA	6 001214373.72	209	IL	10 001201348.70	209	CA	23 001198882.66
210	NJ	7 001213286.94	210	NC	6 001199220.06	210	IA	3 001198045.30
211	NY	15 001210622.47	211	FL	11 001194535.48	211	TX	15 001187519.10
212	IL	10 001210034.42	212	AL	4 001183741.23	212	FL	11 001187003.13
213	TX	15 001209670.18	213	TX	15 001172855.22	213	NC	6 001182678.84
214	AL	4 001205622.81	214	PA	11 001169516.64	214	NE	2 001165029.11
215	CA	24 001197045.36	215	IA	3 001168814.72	215	NY	16 001163998.64
216	MO	5 001159490.52	216	GA	6 001164330.14	216	AL	4 001162610.21
217	IA	3 001155995.73	217	CA	24 001161807.60	217	MO	5 001155912.81
218	CA	25 001148165.59	218	OH	10 001160059.92	218	OR	3 001154444.38
219	NM	2 001144947.28	219	OR	3 001159547.49	219	CA	6 001152298.50
220	OH	10 001136458.80	220	MO	5 001155778.64	220	PA	11 001148235.36
221	NY	16 001132433.84	221	NE	2 001151664.79	221	CA	24 001147842.74
222	TX	16 001131543.05	222	NY	16 001144504.63	222	OH	10 001134666.84
223	PA	11 001126973.16	223	CA	25 001114366.71	223	MA	6 001130462.64
224	OR	3 001123417.52	224	TN	5 001112018.80	224	TX	16 001110822.61
225	NE	2 001120481.38	225	KY	4 001110388.88	225	MS	3 001103984.90
226	VA	6 001117938.05	226	WI	5 001107569.02	226	CA	25 001100972.09
227	TN	5 001110341.75	227	VA	6 001102711.36	227	WI	5 001098982.52
228	FL	12 001108822.28	228	MA	6 001099132.91	228	IL	11 001094994.04
229	CA	26 001103121.79	229	TX	16 001097105.80	229	NY	17 001093386.95
230	MS	3 001100310.67	230	FL	12 001090457.09	230	TN	5 001093124.03
231	IL	11 001094517.31	231	NM	2 001087105.94	231	KY	4 001088189.76
232	MI	9 001094294.40	232	IL	11 001086660.78	232	MI	9 001085809.12
233	KY	4 001079818.18	233	MI	9 001086186.25	233	FL	12 001083581.02
234	AZ	4 001076123.14	234	MS	3 001083572.49	234	NM	2 001078479.24

Appendix A. Comparative Priority Lists Based on Three Population Projections
for 1990 (State Populations Adjusted to Exclude 2,000,000 Illegal Aliens
Proportional to Passel and Woodrow's Estimates for 1980)--Continued

Census 1990 projections			NPA data 1990 projections			BEA 1990 projections					
Seq.	State seat	priority	Seq.	State seat	priority	Seq.	State seat	priority			
235	WI	5	001073267.75	235	NY	17	001075075.52	235	VA	6	001072111.94
236	MA	6	001070395.74	236	CA	26	001070648.88	236	WA	5	001059985.51
237	NY	17	001063736.97	237	PA	12	001067618.10	237	CA	26	001057779.74
238	TX	17	001062900.23	238	WA	5	001049744.32	238	NJ	8	001056616.94
239	CA	27	001061479.48	239	OH	11	001049313.67	239	PA	12	001048191.04
240	NJ	8	001050737.20	240	NJ	8	001046808.46	240	TX	17	001043436.74
241	MD	5	001050415.14	241	AZ	4	001041857.40	241	LA	5	001039547.85
242	WA	5	001036506.79	242	SC	4	001032417.73	242	CO	4	001039172.73
243	NC	7	001030869.56	243	IN	6	001032146.45	243	AZ	4	001032244.52
244	PA	12	001028781.38	244	TX	17	001030552.04	244	KS	3	001032051.56
245	OH	11	001027965.65	245	MD	5	001030514.13	245	NY	18	001030855.08
246	GA	7	001026333.05	246	CA	27	001030232.41	246	OH	11	001026344.76
247	SC	4	001023295.59	247	CO	4	001018070.57	247	IN	6	001021429.35
248	CA	28	001022867.24	248	KS	3	001015925.75	248	CA	27	001017849.07
249	FL	13	001019968.06	249	NY	18	001013590.89	249	AR	3	001000534.80
250	KS	3	001014088.64	250	NC	7	001013525.87	250	MD	5	000999880.01
251	IN	6	001011935.50	251	FL	13	001003074.54	251	IL	12	000999588.56
252	LA	5	001007572.08	252	AR	3	001002535.21	252	NC	7	000999545.99
253	NY	18	001002900.81	253	CA	28	000992756.81	253	SC	4	000998469.53
254	TX	18	001002111.92	254	IL	12	000991981.37	254	FL	13	000996749.48
255	IL	12	000999153.37	255	GA	7	000984038.51	255	OK	4	000995871.46
256	AR	3	000989512.09	256	MN	5	000983511.99	256	MN	5	000985435.01
257	CA	29	000986965.85	257	PA	13	000982065.73	257	TX	18	000983761.57
258	CO	4	000986056.50	258	LA	5	000979956.64	258	CA	28	000980823.93
259	MI	10	000978766.63	259	TX	18	000971613.76	259	CT	4	000978320.01
260	MN	5	000964863.19	260	MI	10	000971514.47	260	NY	19	000975091.32
261	CA	30	000953499.64	261	OK	4	000960018.01	261	GA	7	000973869.92
262	NY	19	000948649.23	262	NY	19	000958761.03	262	MI	10	000971177.16
263	TX	19	000947903.01	263	CA	29	000957912.26	263	PA	13	000964195.44
264	MO	6	000946720.01	264	OH	12	000957888.27	264	MA	7	000955415.24
265	PA	13	000946341.15	265	CT	4	000947951.38	265	CA	29	000946398.21
266	CT	4	000945411.04	266	MO	6	000943689.28	266	MO	6	000943798.82
267	OK	4	000945064.63	267	VA	7	000931961.14	267	OH	12	000936920.62
268	VA	7	000944830.04	268	MA	7	000928936.80	268	NJ	9	000931848.47
269	FL	14	000944306.40	269	FL	14	000928666.05	269	TX	19	000930545.32
270	OH	12	000938400.28	270	CA	30	000925431.21	270	NY	20	000925052.83
271	AL	5	000933871.29	271	NJ	9	000923198.20	271	FL	14	000922810.18

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Appendix A. Comparative Priority Lists Based on Three Population Projections
for 1990 (State Populations Adjusted to Exclude 2,000,000 Illegal Aliens
Proportional to Passel and Woodrow's Estimates for 1980)--Continued

Census 1990 projections				MPA data 1990 projections				BEA 1990 projections			
Seq.	State	seat	priority	Seq.	State	seat	priority	Seq.	State	seat	priority
272	NJ	9	000926663.03	272	TX	19	000919054.64	272	IL	13	000919487.67
273	CA	31	000922228.81	273	AL	5	000916921.90	273	CA	30	000914307.57
274	IL	13	000919087.35	274	IL	13	000912490.07	274	VA	7	000906099.91
275	TN	6	000906590.21	275	NY	20	000909560.56	275	AL	5	000900553.88
276	MA	7	000904649.45	276	PA	14	000909213.68	276	WI	6	000897315.44
277	NY	20	000899967.66	277	TW	6	000907959.52	277	PA	14	000892671.01
278	TX	20	000899259.74	278	WI	6	000904326.29	278	TN	6	000892532.00
279	CA	32	000892944.21	279	CA	31	000895080.90	279	CA	31	000884322.07
280	NC	8	000892759.13	280	ME	2	000883600.61	280	TX	20	000882792.79
281	GA	8	000888830.39	281	OH	13	000881128.98	281	NY	21	000879900.77
282	MI	11	000885327.72	282	MI	11	000878767.90	282	MI	11	000878462.79
283	FL	15	000879101.43	283	NC	8	000877739.06	283	NC	8	000865632.13
284	WI	6	000876319.41	284	IN	7	000872322.91	284	WA	6	000865474.51
285	PA	14	000876141.17	285	TX	20	000871891.77	285	IN	7	000863265.31
286	CA	33	000865462.41	286	CA	32	000866658.36	286	OH	13	000861841.54
287	OH	13	000863202.63	287	NY	21	000865164.68	287	FL	15	000859089.55
288	MD	6	000857660.34	288	FL	15	000864541.06	288	CA	32	000856241.18
289	ME	2	000857013.40	289	KY	5	000860103.42	289	IL	14	000851279.68
290	NY	21	000856040.02	290	WA	6	000857112.61	290	LA	6	000848787.23
291	TX	21	000855366.65	291	GA	8	000852202.25	291	IA	4	000847146.03
292	IN	7	000855241.53	292	PA	15	000846433.76	292	ME	2	000845699.69
293	IL	14	000850909.06	293	IL	14	000844801.17	293	GA	8	000843396.00
294	WA	6	000846304.22	294	MD	6	000841411.24	294	KY	5	000842908.06
295	CA	34	000839621.84	295	CA	33	000839985.55	295	TX	21	000839703.45
296	KY	5	000836423.46	296	TX	21	000829334.51	296	NY	22	000838952.43
297	AZ	5	000833561.29	297	IA	4	000826476.89	297	NJ	10	000833470.58
298	NJ	10	000828832.57	298	NJ	10	000825733.54	298	PA	15	000831031.50
299	LA	6	000822679.13	299	NY	22	000824902.12	299	CA	33	000829888.97
300	FL	16	000822324.25	300	OR	4	000819923.97	300	MA	8	000827413.78
301	VA	8	000818246.72	301	OH	14	000815766.46	301	MD	6	000816398.58
302	IA	4	000817412.49	302	CA	34	000814905.66	302	OR	4	000816315.53
303	NY	22	000816202.09	303	FL	16	000808704.26	303	CA	34	000805110.54
304	PA	15	000815643.05	304	VA	8	000807101.93	304	CO	5	000804939.63
305	TX	22	000815560.06	305	AZ	5	000807019.17	305	MN	6	000804604.29
306	CA	35	000815279.81	306	MA	8	000804482.78	306	WV	3	000803677.49
307	MI	12	000808190.21	307	MN	6	000803034.15	307	FL	16	000803604.84
308	NH	2	000807374.50	308	HI	12	000802201.94	308	MI	12	000801923.41

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Appendix A. Comparative Priority Lists Based on Three Population Projections
for 1990 (State Populations Adjusted to Exclude 2,000,000 Illegal Aliens
Proportional to Passel and Woodrow's Estimates for 1980)--Continued

Census 1990 projections				NPA data 1990 projections				BEA 1990 projections			
Seq.	State	seat	priority	Seq.	State	seat	priority	Seq.	State	seat	priority
309	HI	2	000806808.82	309	LA	6	000800131.22	309	WY	23	000801646.81
310	MO	7	000800124.39	310	SC	5	000799707.23	310	TX	22	000800625.79
311	OH	14	000799169.90	311	MO	7	000797562.96	311	AZ	5	000799573.07
312	OR	4	000794376.22	312	WV	3	000797063.87	312	OH	14	000797909.77
313	SC	5	000792641.26	313	PA	16	000791766.43	313	MO	7	000797655.54
314	CA	36	000792309.54	314	CA	35	000791280.19	314	IL	15	000792498.27
315	IL	15	000792153.24	315	TX	22	000790739.39	315	VA	8	000784705.45
316	MN	6	000787807.46	316	CO	5	000788593.97	316	HI	2	000782767.19
317	NC	9	000787339.48	317	WY	23	000788221.27	317	CA	35	000781769.05
318	GA	9	000783874.66	318	HI	2	000787504.80	318	MS	4	000780635.28
319	MA	8	000783449.32	319	IL	15	000786467.11	319	PA	16	000777358.94
320	NY	23	000779908.11	320	NH	2	000783403.58	320	SC	5	000773411.07
321	TX	23	000779294.62	321	NC	9	000774093.02	321	OK	5	000771398.61
322	MS	4	000778037.20	322	CA	36	000768986.10	322	NY	24	000767518.37
323	FL	17	000772439.57	323	TN	7	000767365.80	323	TX	23	000765024.43
324	CA	37	000770598.31	324	MS	4	000766201.52	324	NC	9	000763415.71
325	TN	7	000766208.52	325	WI	7	000764295.16	325	CA	36	000759742.93
326	CO	5	000763795.98	326	FL	17	000759645.81	326	WI	7	000758369.91
327	PA	16	000762964.36	327	OH	15	000759437.26	327	CT	5	000757803.32
328	AL	6	000762502.69	328	TX	23	000755577.65	328	NH	2	000757169.92
329	WV	3	000757137.19	329	IN	8	000755453.72	329	UT	3	000755504.20
330	NV	2	000756462.82	330	NY	24	000754664.40	330	FL	17	000754855.73
331	CA	38	000750045.31	331	NV	2	000752715.15	331	TW	7	000754327.17
332	NJ	11	000749707.26	332	GA	9	000751571.68	332	NJ	11	000753902.50
333	NY	24	000746705.15	333	AL	6	000748663.57	333	IN	8	000747609.60
334	TX	24	000746117.78	334	CA	37	000747913.99	334	ID	2	000746704.74
335	OH	15	000743986.70	335	NJ	11	000746904.08	335	GA	9	000743805.29
336	MI	13	000743426.80	336	PA	17	000743735.48	336	NV	2	000743734.89
337	IL	16	000740991.64	337	OK	5	000743626.65	337	OH	15	000742813.59
338	IN	5	000740660.81	338	ID	2	000739280.12	338	IL	16	000741314.39
339	WI	7	000740625.03	339	MI	13	000737918.39	339	CA	37	000738924.10
340	CT	5	000732312.15	340	IL	16	000735672.75	340	MI	13	000737662.19
341	OK	5	000732043.82	341	CT	5	000734279.89	341	WY	25	000736177.77
342	CA	39	000730560.25	342	CA	38	000727966.02	342	AL	6	000735299.14
343	FL	18	000728262.99	343	WA	7	000724392.32	343	TX	24	000732455.12
344	MD	7	000724855.23	344	UT	3	000724232.38	344	WA	7	000731459.42
345	VA	9	000721625.72	345	WY	25	000723848.67	345	PA	17	000730201.99

Appendix A. Comparative Priority Lists Based on Three Population Projections
for 1990 (State Populations Adjusted to Exclude 2,000,000 Illegal Aliens
Proportional to Passel and Woodrow's Estimates for 1980)--Continued

Census 1990 projections			NPA data 1990 projections			BEA 1990 projections					
Seq.	State seat	priority	Seq.	State seat	priority	Seq.	State seat	priority			
346	UT	3	000721619.59	346	TX	24	000723410.52	346	KS	4	000729770.7
347	KS	4	000717069.02	347	KS	4	000718368.05	347	MA	9	000729710.30
348	PA	17	000716680.63	348	FL	18	000716200.92	348	CA	38	000719215.91
349	NY	25	000716214.43	349	VA	9	000711796.94	349	LA	7	000717356.09
350	TX	25	000715651.04	350	MD	7	000711122.24	350	FL	18	000711684.79
351	ID	2	000715592.05	351	OH	16	000710388.64	351	RI	2	000710783.72
352	WA	7	000715257.57	352	MA	9	000709487.06	352	AR	4	000707485.00
353	CA	40	000712062.02	353	CA	39	000709054.54	353	NY	26	000707296.70
354	RI	2	000707248.19	354	AR	4	000708899.51	354	TX	25	000702546.27
355	NC	10	000704217.81	355	KY	6	000702031.47	355	CA	39	000700531.74
356	GA	10	000701118.78	356	PA	18	000701200.51	356	IL	17	000696344.02
357	AR	4	000699690.77	357	RI	2	000696500.16	357	OH	16	000694838.62
358	IL	17	000696040.85	358	NY	26	000695451.29	358	VA	9	000692045.10
359	OH	16	000695935.96	359	TX	25	000693871.00	359	MO	8	000690789.88
360	LA	7	000695290.72	360	NC	10	000692369.82	360	MD	7	000689982.69
361	CA	41	000694477.60	361	CA	40	000691100.85	361	PA	18	000688441.02
362	MO	8	000692927.97	362	IL	17	000691044.61	362	KY	6	000688231.52
363	MA	9	000690937.30	363	MO	8	000690709.70	363	NJ	12	000688215.91
364	FL	19	000688867.85	364	MI	14	000683179.30	364	MI	14	000682942.10
365	MI	14	000688279.09	365	NJ	12	000681827.26	365	NC	10	000682819.74
366	NY	26	000688116.55	366	MN	7	000678687.68	366	CA	40	000682793.86
367	TX	26	000687575.27	367	FL	19	000677458.28	367	NY	27	000680596.60
368	NJ	12	000684386.20	368	LA	7	000676234.26	368	MN	7	000680014.69
369	KY	6	000682936.87	369	CA	41	000674034.07	369	TX	26	000674984.61
370	AZ	6	000680599.92	370	GA	10	000672226.12	370	FL	19	000673186.45
371	CA	42	000677740.67	371	NY	27	000669198.34	371	NE	3	000672629.80
372	PA	18	000675692.96	372	OH	17	000667294.31	372	CA	41	000665932.22
373	MN	7	000665818.79	373	TX	26	000666649.68	373	CA	10	000665279.65
374	TN	8	000663555.97	374	IN	9	000666247.50	374	IN	9	000659329.64
375	NY	27	000662140.48	375	NE	3	000664913.91	375	CO	6	000657230.43
376	CA	43	000661791.62	376	TN	8	000664558.20	376	WI	8	000656767.54
377	TX	27	000661619.63	377	PA	19	000663269.31	377	IL	18	000656519.42
378	NM	3	000661035.55	378	WI	8	000661898.95	378	IA	5	000656196.41
379	IL	18	000656233.59	379	AZ	6	000658928.37	379	NY	28	000655839.31
380	OH	17	000653718.38	380	CA	42	000657789.83	380	TN	8	000653266.42
381	FL	20	000653517.41	381	SC	6	000652958.20	381	AZ	6	000652848.65
382	IN	9	000653201.38	382	IL	18	000651523.09	382	OH	17	000652687.60

Appendix A. Comparative Priority Lists Based on Three Population Projections
for 1990 (State Populations Adjusted to Exclude 2,000,000 Illegal Aliens
Proportional to Passel and Woodrow's Estimates for 1980)--Continued

Census 1990 projections				MPA data 1990 projections				BEA 1990 projections			
Seq. State seat priority				Seq. State seat priority				Seq. State seat priority			
383 SC	6	000647188.85		383 NY	28	000644855.67		383 MA	10	000652672.71	
384 NE	3	000646910.17		384 CO	6	000643884.26		384 PA	19	000651200.04	
385 CA	44	000646575.97		385 FL	20	000642693.34		385 CA	42	000649883.23	
386 VA	10	000645441.64		386 CA	43	000642310.28		386 TX	27	000645504.27	
387 AL	7	000644432.35		387 TX	27	000641483.97		387 FL	20	000638640.72	
388 WI	8	000641400.02		388 IA	5	000640186.16		388 MI	15	000635784.51	
389 MI	15	000640752.97		389 VA	10	000636650.51		389 CA	43	000634589.74	
390 PA	19	000639141.58		390 MI	15	000636005.33		390 WA	8	000633462.37	
391 NY	28	000638054.55		391 OR	5	000635110.29		391 NJ	13	000633066.50	
392 TX	28	000637552.65		392 MA	10	000634584.49		392 NY	29	000632820.15	
393 NC	11	000636988.97		393 AL	7	000632736.16		393 OR	5	000632315.21	
394 GA	11	000634185.79		394 PA	20	000629232.50		394 SC	6	000631487.48	
395 IA	5	000633164.91		395 OH	18	000629131.10		395 OK	6	000629844.31	
396 CA	45	000632044.36		396 NM	3	000627640.85		396 TX	28	000625877.99	
397 NJ	13	000629543.69		397 CA	44	000627542.53		397 NM	3	000622660.22	
398 MD	8	000627742.98		398 WA	8	000627342.09		398 AL	7	000621441.15	
399 CO	6	000623636.79		399 NJ	13	000627189.80		399 LA	8	000621248.53	
400 FL	21	000621619.06		400 NC	11	000626272.06		400 IL	19	000621005.22	
401 IL	19	000620734.85		401 NY	29	000622222.02		401 CA	44	000619999.50	
402 WA	8	000619431.16		402 TX	28	000618149.44		402 VA	10	000618983.93	
403 CA	46	000618151.54		403 IL	19	000616279.17		403 CT	6	000618743.80	
404 MA	10	000617993.08		404 MD	8	000615849.86		404 PA	20	000617782.58	
405 OH	18	000616331.58		405 CA	45	000613438.69		405 NC	11	000617633.69	
406 NY	29	000615659.61		406 FL	21	000611323.32		406 OH	18	000615359.76	
407 OR	5	000615321.09		407 MO	9	000609148.65		407 NY	30	000611362.37	
408 TX	29	000615175.33		408 GA	11	000608051.40		408 MT	2	000609243.19	
409 MO	9	000611104.98		409 OK	6	000607168.60		409 MO	9	000609219.36	
410 PA	20	000606342.93		410 NY	30	000601123.61		410 FL	21	000607468.51	
411 CA	47	000604856.44		411 CA	46	000599954.84		411 CA	45	000606065.19	
412 MS	5	000602664.95		412 CT	6	000599537.00		412 MS	5	000604677.41	
413 LA	8	000602139.36		413 PA	21	000598519.51		413 TX	29	000603910.44	
414 MI	16	000599369.64		414 TX	29	000596453.15		414 CA	11	000601768.08	
415 CT	6	000597930.35		415 IN	10	000595909.85		415 MD	8	000597542.47	
416 OK	6	000597711.26		416 MT	2	000595242.47		416 MI	16	000594722.06	
417 NY	30	000594783.72		417 OH	19	000595098.46		417 CA	46	000592743.42	
418 TX	30	000594315.86		418 MI	16	000594928.62		418 NY	31	000591312.22	
419 FL	22	000592690.49		419 KY	7	000593527.69		419 MA	11	000590364.67	

Appendix A. Comparative Priority Lists Based on Three Population Projections
for 1990 (State Populations Adjusted to Exclude 2,000,000 Illegal Aliens
Proportional to Pessel and Woodrow's Estimates for 1980)--Continued

Census 1990 projections			NPA data 1990 projections			BEA 1990 projections		
Seq.	State seat	priority	Seq.	State seat	priority	Seq.	State seat	priority
420	CA	48 000592121.13	420	MS	5 000593497.07	420	IM	10 000589722.33
421	IL	20 000588880.78	421	MN	8 000587760.71	421	IL	20 000589137.27
422	TN	9 000585201.31	422	CA	47 000587051.11	422	MN	8 000588909.93
423	IN	10 000584241.05	423	TN	9 000586085.19	423	PA	21 000587628.46
424	VA	11 000583823.92	424	LA	8 000585635.98	424	MJ	14 000586105.36
425	OH	19 000582991.34	425	IL	20 000584653.74	425	TX	30 000583432.94
426	NJ	14 000582843.87	426	WI	9 000583739.96	426	OH	19 000582072.08
427	NC	12 000581488.91	427	FL	22 000582873.88	427	KY	7 000581661.76
428	CA	49 000579911.14	428	NY	31 000581409.25	428	CA	47 000579994.79
429	GA	12 000578929.97	429	NJ	14 000580664.60	429	WI	9 000579214.48
430	KY	7 000577186.96	430	TX	30 000576228.51	430	FL	22 000579198.47
431	PA	21 000576747.18	431	VA	11 000575872.05	431	TN	9 000576126.78
432	MN	8 000576615.92	432	CA	48 000574690.69	432	NY	32 000572535.60
433	NY	31 000575277.28	433	MA	11 000574003.26	433	WV	4 000568285.85
434	AZ	7 000575211.88	434	NC	12 000571705.75	434	CA	48 000567782.94
435	TX	31 000574824.76	435	PA	22 000570665.93	435	KS	5 000565277.90
-Sequence Number 435 is the Last Seat Assignment Allowed by Law-								
436	MT	2 000568938.10	436	OH	20 000564559.96	436	TX	31 000564298.75
437	CA	50 000568194.62	437	WV	4 000563609.32	437	NC	12 000563820.03
438	FL	23 000566335.38	438	NY	32 000562947.09	438	IL	21 000560381.33
439	WI	9 000565661.60	439	CA	49 000562840.13	439	PA	22 000560281.73
440	MI	17 000563010.06	440	MI	17 000558838.45	440	VA	11 000559892.02
441	IL	21 000560137.36	441	TX	31 000557330.60	441	WA	9 000558661.25
442	MA	11 000558995.77	442	FL	23 000556955.28	442	MI	17 000558644.42
443	AL	8 000558094.72	443	AZ	7 000556896.08	443	CA	49 000556074.83
444	WY	32 000557009.84	444	KS	5 000556445.43	444	CO	7 000555461.06
445	CA	51 000556942.13	445	IL	21 000556116.65	445	NY	33 000554914.89
446	TX	32 000556571.69	446	GA	12 000555072.63	446	FL	23 000553443.30
447	KS	5 000555439.20	447	WA	9 000553263.67	447	OH	20 000552202.05
448	MD	9 000553617.22	448	SC	7 000551850.36	448	AZ	7 000551757.78
449	OR	20 000553074.13	449	CA	50 000551468.51	449	GA	12 000549336.77
450	PA	22 000549906.83	450	AR	5 000549111.13	450	AR	5 000548015.46
451	SC	7 000546974.38	451	AL	8 000547965.53	451	LA	9 000547889.66
452	MO	10 000546588.89	452	WY	33 000545621.48	452	TX	32 000546379.93
453	WA	9 000546286.88	453	PA	23 000545290.18	453	MJ	15 000545634.41
454	CA	52 000546126.64	454	MO	10 000544839.09	454	MO	10 000544902.34
455	MJ	15 000542598.13	455	CO	7 000544181.49	455	CA	50 000544839.89

Appendix A. Comparative Priority Lists Based on Three Population Projections
for 1990 (State Populations Adjusted to Exclude 2,000,000 Illegal Aliens
Proportional to Passel and Woodrow's Estimates for 1980)--Continued

Census 1990 projections			NPA data 1990 projections			BEA 1990 projections		
Seq.	State	seat priority	Seq.	State	seat priority	Seq.	State	seat priority
456	FL	24 000542224.83	456	MD	9 000543128.48	456	MA	12 000538926.93
457	AR	5 000541978.07	457	NJ	15 000540569.33	457	WY	34 000538346.50
458	NY	33 000539866.96	458	CA	51 000540547.27	458	AL	8 000538183.77
459	TX	33 000539442.29	459	TX	32 000539633.04	459	IA	6 000535782.10
460	CA	53 000535723.32	460	IN	11 000539020.74	460	PA	23 000535367.73
461	WV	4 000535376.89	461	OH	21 000537003.65	461	IL	22 000534302.61
462	NC	13 000534891.96	462	FL	24 000533244.08	462	UT	4 000534222.19
463	IL	22 000534069.99	463	IL	22 000530236.39	463	CA	51 000534049.92
464	VA	12 000532956.07	464	CA	52 000530050.16	464	SC	7 000533704.29
465	GA	13 000532538.07	465	NY	34 000529330.58	465	IN	11 000533423.91
466	LA	9 000531036.95	466	MI	18 000526877.93	466	OK	7 000532315.56
467	MI	18 000530810.96	467	NC	13 000525892.76	467	FL	24 000529881.61
468	IN	11 000528465.91	468	VA	12 000525697.03	468	TX	33 000529564.20
469	CO	7 000527069.25	469	TN	10 000524210.51	469	MD	9 000526982.88
470	OH	21 000526078.45	470	MA	12 000523991.07	470	MI	18 000526694.99
471	CA	54 000525708.90	471	TX	33 000523024.96	471	OH	21 000525248.93
472	PA	23 000525454.17	472	IA	6 000522709.79	472	CA	52 000523678.98
473	NY	34 000523747.86	473	WI	10 000522112.87	473	CT	7 000522933.92
474	TN	10 000523419.94	474	PA	24 000522075.59	474	NY	35 000522738.95
475	TX	34 000523335.88	475	CA	53 000519953.08	475	MN	9 000519369.70
476	FL	25 000520083.79	476	OR	6 000518565.36	476	NC	13 000518638.95
477	IA	6 000516976.97	477	MN	9 000518356.18	477	WI	10 000518065.16
478	CA	55 000516062.03	478	LA	9 000516482.35	478	OR	6 000516283.18
479	IL	23 000510321.55	479	KY	8 000514010.00	479	TN	10 000515303.43
480	MA	12 000510291.16	480	NY	35 000513984.40	480	TX	34 000513752.72
481	UT	4 000510262.15	481	OK	7 000513151.09	481	CA	53 000513703.27
482	NY	35 000508563.54	482	UT	4 000512109.67	482	PA	24 000512575.57
483	MN	9 000508527.40	483	OH	22 000512012.86	483	SD	2 000511238.19
484	TX	35 000508163.50	484	FL	25 000511469.76	484	VA	12 000511109.32
485	NJ	16 000507554.16	485	GA	13 000510592.51	485	IL	23 000510543.82
486	CA	56 000506762.88	486	CA	54 000510233.46	486	NJ	16 000510394.35
487	WI	10 000505943.10	487	ME	3 000510147.00	487	FL	25 000508244.59
488	CT	7 000505343.34	488	SD	2 000507914.79	488	NY	36 000508010.93

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Appendix A. Comparative Priority Lists Based on Three Population Projections
for 1990 (State Populations Adjusted to Exclude 2,000,000 Illegal Aliens
Proportional to Passel and Woodrow's Estimates for 1980)--Continued

Census 1990 projections			NPA data 1990 projections			BEA 1990 projections		
Seq.	State seat	priority	Seq.	State seat	priority	Seq.	State seat	priority
489	OK	7 000505158.18	489	TX	34 000507408.73	489	CA	13 000505316.29
490	PA	24 000503084.06	490	CT	7 000506701.21	490	CA	54 000504100.49
491	OR	6 000502407.55	491	IL	23 000506658.42	491	KY	8 000503733.81
492	MI	19 000502096.92	492	NJ	16 000505656.40	492	MD	2 000502894.33
493	OH	22 000501596.09	493	CA	55 000500870.56	493	OH	22 000500805.18
494	SD	2 000500560.88	494	PA	25 000500757.32	494	WA	10 000499681.79
495	KY	8 000499858.52	495	NY	36 000499503.05	495	TX	35 000498858.18
496	FL	26 000499680.33	496	MI	19 000498376.64	496	MI	19 000498203.61
497	AZ	8 000498148.05	497	WA	10 000494854.05	497	MA	13 000495740.63
498	CA	57 000497792.93	498	MO	11 000492825.50	498	CA	55 000494850.13
499	NC	14 000495213.44	499	TX	35 000492698.11	499	NY	37 000494090.18
500	MD	10 000495170.28	500	IN	12 000492056.53	500	MS	6 000493717.02

Source: The priority rankings were computed on the Library of Congress central computer based on populations in Appendix B.

Appendix B. Populations Used to Compute Priority Lists in Appendix A
 (State Populations Adjusted To Exclude 2,000,000 Illegal Aliens
 Proportional to Passel and Woodrow's Estimates for 1980)

State	Census 1990 Projections	NPA Data 1990 Projections	BEA 1990 Projections
Alabama	4,176,400	4,100,600	4,027,400
Alaska	574,800	570,200	563,800
Arizona	3,727,800	3,609,100	3,575,800
Arkansas	2,423,800	2,455,700	2,450,800
California	28,124,200	27,296,300	29,968,200
Colorado	3,415,800	3,526,700	3,599,800
Connecticut	3,275,000	3,283,800	3,839,000
Delaware	665,200	677,100	638,200
Florida	12,739,400	12,528,400	12,449,400
Georgia	6,651,400	6,377,300	6,311,400
Hawaii	1,141,000	1,113,700	1,107,000
Idaho	1,012,000	1,045,500	1,056,000
Illinois	11,479,400	11,397,000	11,484,400
Indiana	5,542,600	5,653,300	5,594,600
Iowa	2,831,600	2,863,000	2,934,600
Kansas	2,484,000	2,488,500	2,528,000
Kentucky	3,740,600	3,846,500	3,769,600
Louisiana	4,506,000	4,382,500	4,649,000
Maine	1,212,000	1,249,600	1,196,000
Maryland	4,697,600	4,608,600	4,471,600
Massachusetts	5,862,800	6,020,200	6,191,800
Michigan	9,285,400	9,216,600	9,213,400
Minnesota	4,315,000	4,398,400	4,407,000
Mississippi	2,695,200	2,654,200	2,704,200
Missouri	5,185,400	5,168,800	5,169,400
Montana	804,600	841,800	861,600
Nebraska	1,584,600	1,628,700	1,647,600
Nevada	1,069,800	1,064,500	1,051,800
New Hampshire	1,141,800	1,107,900	1,070,800
New Jersey	7,863,000	7,833,600	7,907,000

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Appendix B. Populations Used to Compute Priority Lists in Appendix A
(State Populations Adjusted To Exclude 2,000,000 Illegal Aliens
Proportional to Passel and Woodrow's Estimates for 1980)

State	Census 1990 Projections	NPA Data 1990 Projections	BEA 1990 Projections
New Mexico	1,619,200	1,537,400	1,525,200
New York	17,543,600	17,730,600	18,032,600
North Carolina	6,680,800	6,568,400	6,477,800
North Dakota	659,200	691,800	711,200
Ohio	10,781,400	11,005,300	10,764,400
Oklahoma	3,273,800	3,325,600	3,449,800
Oregon	2,751,800	2,840,300	3,287,800
Pennsylvania	11,819,800	12,266,000	12,042,800
Rhode Island	1,000,200	985,000	1,005,200
South Carolina	3,544,800	3,576,400	3,458,800
South Dakota	707,900	718,300	723,000
Tennessee	4,965,600	4,973,100	4,888,600
Texas	17,529,800	16,996,300	17,208,800
Utah	1,767,600	1,774,000	1,850,600
Vermont	562,000	564,600	566,000
Virginia	6,123,200	6,039,800	5,872,200
Washington	4,635,400	4,694,600	4,740,400
West Virginia	1,854,600	1,952,400	1,968,600
Wisconsin	4,799,800	4,953,200	4,914,800
Wyoming	501,000	543,300	561,000
Total	247,349,700	246,744,500	250,488,800

OVERRIDING THE UNDERCOUNT

Should the 1990 census be adjusted to include the uncounted, many of whom are blacks?

BY DAVID RILEY

When the Census Bureau finishes tallying the results of the 1990 census, its final count of 250 million people will be about three million short of the number of people who actually live here. Judging by the last census in 1980, more than half of those not counted will be black, although the U.S. population is only 11 percent black. That means the census is missing a much higher percentage of black than whites.

Therein lies a big political problem for the Census Bureau and its parent agency, the Commerce Department.

Already, one high Bureau official has resigned in protest against the Commerce Department's decision not to proceed with preparations for a statistical adjustment of the census that would take into account the underrepresentation of blacks and other minorities in the census count. Since minorities generally vote Democratic, and census counts are used to apportion congressional seats and state legislative districts, some Democrats on Capitol Hill are incensed by what they see as political interference in the national census, which has historically remained above the fray.

But Commerce insists that the Census Bureau stick with the time-honored techniques of mail surveys and personal interviews. "We felt that the traditional and simpler approach [of not adjusting] would be the better one," says Undersecretary of Commerce Robert Ortner, himself a statistician. "I guess I'm a statistical conservative."

Through public outreach, improved automation, and just plain practice, the Census Bureau has made substantial progress in reducing the national undercount to about 1.4 percent in 1980. But the "differential undercount," the fact that the undercount

for blacks and other minorities is about 5 percent higher than for whites, has remained constant since 1940. For some segments of the population, the undercount is especially high. For example, the census misses nearly one out of five black men between the ages of 40 and 45.

Critics object that not only does the differential undercount undermine the constitutional right to equal representation, but it also means that areas with large minority populations receive less than their share of \$30 billion in federal funds distributed according to census figures. Many state funds are distributed the same way, and planning decisions by governments, such as where to put bus lines or subsidized housing units, are based on census figures. So are planning decisions by the private sector, such as where to locate supermarkets.

The Bureau estimates that the 1980 census missed half a million people in New York City, resulting in the city's loss of a congressional seat and between \$26 and \$52 million a year in federal and state funds. Detroit officials estimate that the last census missed 46,000 people, resulting in a loss of more than \$34 million in federal and state funds. The mayor of Santa Ana, Calif., believes that the census underestimated his city's population by one-third.

New York, Detroit, and 34 other communities filed lawsuits against the Bureau, asking it to adjust the 1980 census figures to correct for the acknowledged undercount. Federal judges in New York and Detroit initially ruled in favor of adjustment. "The Constitution requires no less," wrote one judge. Although appeals courts later overturned both decisions on procedural grounds, one of them noted a "likelihood of success on the merits." More than half of the other cases are still pending.

Estimating the Undercount

The Bureau measures census undercounts by two methods. To measure the national undercount, it uses demographic information, such as birth and death records and estimates of immigration and emigration. But such information is not detailed enough for state and local breakdowns.

The second method involves a post-census survey in which census-takers interview people in representative blocks several months after the census is taken. The Bureau then matches the survey against the census, extrapolating to estimate how many people the census missed at the national, state and local levels. The Bureau argued in 1980 that this method was not precise enough to provide accurate undercount estimates at the state and local levels either, and in 1982 it began an extensive research and testing project to improve the post-census survey.

Barbara Bailer, then-associate director for statistical standards and methodology, was a principal Bureau witness in the 1980 lawsuits, arguing that the post-census survey was subject to too many large errors to be a reliable basis for adjustment. But after working on the Bureau's project to improve the survey, she testified at a congressional hearing last March that the Bureau's test censuses in 1986 in Los Angeles and Meridian, Miss., corrected most of the errors that had been the basis of the Bureau's case against adjustment.

Two groups of professional statisticians outside the Census Bureau have been following closely the Bureau's work on adjustment: one from the National Academy of Science and another from the American Statistical Association (ASA). Both groups strongly support continuation of the Bureau's program of laying the groundwork for an adjustment. As president of ASA, Bailer addressed its annual meeting last summer, declaring that "the consensus of the statisticians" who had carefully reviewed the Bureau's work was that an adjustment would improve the accuracy of the 1990 census.

But the Reagan Administration disagreed. Last October 30, Ortner announced that there would be no adjustment of the 1990 census. He said an adjustment was unlikely to improve the count, would arouse suspicions of political tampering with the numbers, and would dilute too many resources

from the job of conducting the best possible census.

Under questioning by Rep. Charles Schumer, D-N.Y., at the March hearing, Bureau Director John Keane indicated that the Commerce Department's action had overruled the Bureau's own decision to proceed with laying the groundwork for adjusting the 1990 census. The Department decided both not to adjust and not to conduct the expanded post-census survey necessary for adjustment should a decision be made later to do so. While some in the Bureau had doubts about the adjustment itself, nearly everyone wanted to continue laying the groundwork to make it possible.

The Commerce Department's decision set off a storm of protest:

- Bailer resigned after 29 years at the Bureau, charging that the Department had made a "political decision" that undermined the Bureau's independence.

- Rep. Mervyn Dymally, D-Calif., Chairman of the House Subcommittee on Census and Population, denounced the Department for ignoring the differential undercount which "renders the constitutional guarantee of equal representation a hollow promise." Dymally's bill requiring a census adjustment has 60 co-sponsors so far. Sen. Daniel Patrick Moynihan, D-N.Y., a long-time student of the census who first voiced concern about the differential undercount 20 years ago, has introduced the same bill in the Senate.

- New York City is seriously considering another lawsuit against the Bureau, this time well in advance of the 1990 census, and the U.S. Conference of Mayors is spearheading a coalition effort to get adjustment legislation passed. The coalition includes New York, Los Angeles, Chicago, Miami, Baltimore and Detroit, as well as a variety of organizations.

Statisticians vs. Counters

Within the Census Bureau, the adjustment debate is not between liberals and conservatives or Democrats and Republicans, but between statisticians and field people in charge of running the count itself. It is a split between traditionalists who want to keep the emphasis on the actual count, as in the past, and statisticians who say that statistical models may succeed where the traditional approach has failed at reducing the undercount.

"It has to do with the philosophy of the

census," says Bailer. "Some believe that you should go out and almost touch everybody to be sure they're counted. Others look at the uses to which the census is put, and focus on getting the best numbers possible."

Traditionalists admit that there will inevitably be an undercount in 1990, but they hope that improved outreach efforts will reduce both the overall and the differential undercounts. But their critics argue that the differential undercount could be even worse in 1990 given the increase in undocumented aliens in the country.

They point to groups like the estimated 100,000 people doubled up in overcrowded housing in New York City who would like not to be counted by the census because they don't want to be found out by the housing authorities. Their deep-seated distrust of government hasn't been broken down in the past by the Bureau's outreach efforts or by its assurances about the confidentiality of census information.

"It's never-never land to tell these people that census information is confidential," says Rep. Schumer. "Outreach is not going to do it. . . . It's a very white, middle class way to think."

Critics argue that some programs to improve census coverage waste millions of dollars, and may even, as former Census Bureau Director Vincent Barabba has warned, make the problem of the differential undercount worse, not better.

How could this be? Bailer explained in her March 3 testimony that some coverage improvement programs, such as one counting people in vacation houses, have led to counting people twice. The Bureau estimates that it counted 2.7 million people twice in 1980. Bailer points out that duplication tends to occur in suburban and vacation areas, not in traditionally undercounted areas. Because the Bureau's undercount estimate is a net figure, the duplication makes the undercount appear to be lower than it really is. In an internal memo, one high Bureau official objected to reducing duplication because it would increase the undercount figure, thus likely increasing pressure on the Bureau to adjust for it.

Even the most avid supporters of adjustment admit that it would be an imperfect instrument. But Bailer argues that "adjustment would move the census counts in the

right direction," at the national, state and local levels, while at the block level, "data would be neither improved nor harmed." Five Bureau statisticians, including Statistical Research Division Chief Kirk Wolter, wrote a paper, published in the *ASA Proceedings*, arguing that none of the remaining weaknesses in the adjustment method "are so large as to invalidate the adjustment. The joint effect of the errors . . . is smaller than the error in the original [census]. On this basis we conclude that it is technically feasible to correct the 1990 census for differential coverage."

The Bureau has in fact adjusted its figures for many years, imputing people into housing units when census-takers find evidence that someone lives there but cannot find anyone at home to interview. But Ortner argues that such imputation is based on more specific physical evidence than a large-scale adjustment would be.

He warns that such an adjustment could open a Pandora's box of fiddling with the numbers that would ultimately undermine the credibility of the census. He cites statisticians who oppose adjustment, but Bailer testified that none of them has reviewed the Bureau's recent work on adjustment. Wolter points out that other countries, notably Australia and England, adjust their censuses for undercounts, and Canada is considering whether to adopt the Bureau's approach to adjustment.

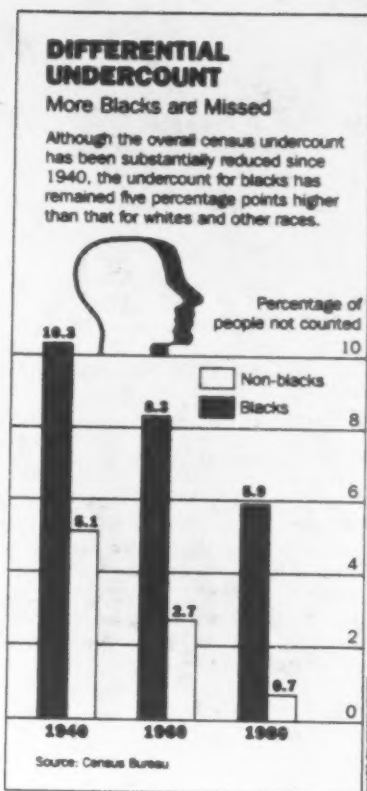
The Commerce Department's decision, if not overturned by the courts or Congress, could hobble the ability of all three branches of government to deal with the undercount problem. Both Congress and a new administration would find it difficult to order an adjustment if the statistical basis for it—the expanded post-census survey—does not exist. The courts would also be hampered when faced with a replay of the Bureau's 1980 arguments against adjustment: We don't have the data to do it.

But the Census Bureau's research on adjustment, and the Commerce Department's decision to cut off that research, could undermine the credibility of the Bureau's arguments the next time around. Bailer testified that the Bureau "barely escaped a court order to adjust" in the last round of lawsuits. This time, she argues, the Bureau "can no longer argue that it does not know how to

adjust accurately, and I believe that new lawsuits will be successful. The question is not whether the 1990 census will be adjusted, but whether it will be adjusted well and on time."

The legislative and executive branches are the most appropriate ones for ordering a nationwide adjustment. If they fail to do so, the resulting lawsuits from cities and states could undermine the credibility of the census, no matter what the courts decide. If the courts rule against adjustments, the hue and cry from aggrieved cities could get so loud that it would damage the public image of the census. If the courts decide to order adjustments, it would be difficult for them to do so on a nationwide basis, and court-ordered adjustments on a local, case-by-case basis could, as the Philadelphia federal judge warned in 1980, sacrifice the national census "to the exact dangers of local manipulation and bias... that the framers [of the Constitution] sought to avoid." □

GOVERNMENT EXECUTIVE • MAY 1988





U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 29, 1988

Rep. William D. Ford
Chairman
Committee on the Post Office and Civil Service
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This provides the views of the Department of Justice on H.R. 3814, "Relating to decennial censuses of population." In principal part, H.R. 3814 would eliminate illegal aliens from the United States census tabulation when apportioning representatives in Congress among the states. For the reasons discussed below, we oppose passage of this bill because it is unconstitutional. If it were passed, we would recommend that the President veto it.

Section two of the Fourteenth Amendment to the Constitution provides that:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

U.S. Const., amend. XIV, sec. 2.¹ This constitutional provision

¹ Section 2 replaces, in part, the provision in Article I, sec. 2, cl. 3 of the Constitution that provided:

Representatives . . . shall be apportioned among the several States . . . according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons . . . three fifths of all other Persons.

Although we have not found any cases interpreting the breadth of Article I, the Founding Fathers were aware that the census, and therefore apportionment, would be based on the number of State inhabitants, not of voters. See, e.g., The Federalist Papers, No. 54, at 338 (C. Rossiter, ed.).

is implemented by 13 U.S.C. 141(b).² The legislative history accompanying section 2 of the Fourteenth Amendment makes clear that Congress intended for all persons, including aliens residing in this country, to be included in the "whole number of persons in each State." *Id.*

The end of the Civil War and the freeing of the slaves meant an end to apportionment based on the "three fifths" provision of Article 1. See note 1. The Reconstruction Congress realized that once readmitted, the former Confederate states would increase their population base by forty percent, adding twelve Representatives to their pre-war total of eighteen.³ In an effort to undermine this growth in political power before these states were readmitted to the Union, the Thirty-ninth Congress examined various formulas designed to reduce representation whenever states, as expected, discriminated against portions of their male population by excluding them from voting on the basis of race.

For example, there was significant support in the Thirty-Ninth Congress for a proposal that representation be based on the number of male voters over the age of twenty-one. See, *e.g.*, Cong. Globe, 39th Cong., 1st Sess. 404 (1866). However, this proposal met serious resistance from many of the Northern states, especially in New England. These states had disproportionately large populations of nonvoters, such as women (large numbers of men had left their homes to pioneer in the west) and aliens.⁴ As

² Section 141(b) provides:

The tabulation of total population by States under [the census] as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.

³ G. Zuckerman, A Consideration of the History and Present Status of Section 2 of the Fourteenth Amendment, 30 Ford. L. Rev. 93, 94 (1961) (Zuckerman).

⁴ Zuckerman, *supra* note 3, at 95. As Sen. Wilson noted:

How [does this proposal affect] the loyal States? It throws out of the basis at least two and a half millions of unnaturalized foreign-born men and women, and by this we lose at least fifteen Representatives In 1860 there were in the loyal States 3,856,628 unnaturalized persons of foreign birth, and in the rebel States 233,651. I estimate that Massachusetts would lose one Representative certainly, and probably two,

Rep. Conkling, one of the original drafters of the Fourteenth Amendment, noted when defending his amendment to count persons rather than citizens, "[m]any of the large States now hold their representation in part by reason of their aliens, and the Legislatures and people of these States are to pass upon the amendment. It must be made acceptable to them." Cong. Globe, 39th Cong., 1st Sess. 359 (1866).

Faced with extensive debate over the amendment's language, the Republicans became concerned that the measure would not pass the Senate. They therefore went into caucus, agreeing to be bound by its decision, and adopted the present language regarding "persons" rather than "citizens." Notwithstanding the protests of opponents who bitterly denounced this language as nothing more than a political compromise designed to ensure passage of the amendment,⁶ the Republicans held the majority and the amendment, apportioning representation on the basis of the "whole number of persons" in each state, was passed.

Thus, the Congress that passed the Fourteenth Amendment in 1866 not only recognized that aliens would be counted in the census but insisted upon their inclusion as part of a compromise designed to ensure that the amendment would be passed by the industrial states. They did so notwithstanding their acknowledgment that aliens were not *bona fide* members of the body politic. They rejected arguments that representation should be based on people with permanent ties to the country. They consciously chose to include aliens to advance their dual concerns: ensuring passage of the amendment by the northern states and denial to the South of any additional representation in Congress.

It is noteworthy that the Supreme Court, in analyzing section 1 of the Fourteenth Amendment, has read the word "person" to include illegal aliens. "Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed

⁴ (Cont.) by this change; that New York would lose at least four, Pennsylvania two, Ohio two; and other States would lose in their representation.

Cong. Globe, 39th Cong., 1st Sess. 1256 (1866).

⁵ Zuckerman, *supra* note 3, at 105.

⁶ Cong. Globe, 39th Cong., 1st Sess. 404, 405 (1866) (statement of Rep. Lawrence). See also *id.* at 2939 (statement of Sen. Hendricks).

⁷ See generally Note, Demography and Distrust: Constitutional Issues of the Federal Census, 94 Harv. L. Rev. 841, 846-48 (1981).

due process of law by the Fifth and Fourteenth Amendments." Plyler v. Doe, 457 U.S. 202, 210 (1982) (citations omitted), reh'g denied, 458 U.S. 1131 (1982). It would seem reasonable to assume that those whom the drafters of the Fourteenth Amendment intended to include in the word "persons" in section 1 of the amendment are the same "persons" included by section 2.

We must note that the Reconstruction Congress did not discuss the issue of illegal aliens when it debated the Fourteenth Amendment.⁸ It was, however, possible to be an illegal alien in 1866. The United States has had a statute since 1798 governing arrest and exclusion of aliens from hostile countries. Act of July 6, 1798, ch. 66, 1 Stat. 577 (Act), codified at 50 U.S.C. 21. The President is authorized to arrest, secure and remove, with the aid of the courts and the federal marshals, any such aliens he identifies. Moreover, this statutory authority had been exercised prior to 1866.⁹ Thus, although the issue was not raised in the debate over the Fourteenth Amendment, certain classes of aliens could be excluded from the United States in 1866 and removed by order of the President if they attempted to return.¹⁰

The Department of Justice has advised previous Congresses considering identical legislation that aliens must be included within the census for purposes of apportioning congressional

⁸ C. Gordon and H. Rosenfeld, 1 Immigration Law & Procedure, at 1-8 (1985).

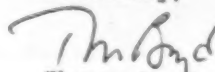
⁹ Lockington v. Smith, 15 F. Cas. 758 (C.C. Pa. 1817) (No. 8448); Lockington's Case, Brightly N.P. 269 (Pa. 1813).

¹⁰ Moreover, subsequent Congresses have acknowledged, by their efforts to exclude aliens from the census, that the Fourteenth Amendment requires the counting of all aliens. The 71st and 72nd Congresses debated passage of constitutional amendments that would have excluded aliens in the count for apportionment of representatives. See H.R. Rep. 2761, 71st Cong., 3d Sess. (1931); H.R. Rep. 823, 72d Cong., 1st Sess. (1932). The Senate legal counsel had earlier issued an opinion concluding that aliens could not be excluded. 71 Cong. Rec. 1821 (1929). In 1940, a bill to exclude aliens was defeated. See q.q., 86 Cong. Rec. 4372 (1940) (statement of Rep. Celler) ("If you want aliens out, you must amend the Constitution").

Representatives,¹¹ and has adopted that position in court.¹² We have reexamined this position and continue to believe that it is sound. Accordingly, we find that to the extent that H.R. 3814 would exclude illegal aliens from the census, it is unconstitutional.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,



Thomas M. Boyd
Acting Assistant Attorney General

¹¹ See e.g., Testimony of David A. Strauss, Attorney-Adviser, Office of Legal Counsel, 1980 Census: Counting Illegal Aliens, Hearing on S. 2366 Before the Subcomm. on Energy, Nuclear Proliferation and Federal Services of the Senate Comm. on Governmental Affairs, 96th Cong., 2d Sess., at 95 (1980) (Hearing).

¹² See Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss the Action or, in the Alternative, for Summary Judgement and in Opposition to Plaintiffs' Application for a Preliminary Injunction, filed in Federation for American Immigration Reform v. Klutznick, 486 F. Supp. 564, 576-77 (D.D.C.) (3-judge court) (FAIR), appeal dismissed, 447 U.S. 916 (1980). The Memorandum is reprinted in the Hearings, supra note 11, at 125. The FAIR court endorsed the government's position in dictum. See 486 F. Supp. at 576-77 (reading section 2 to include all aliens) (dictum).